

**TECHNICAL CROSS REFERENCE REVISIONS**

2010 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Johnny Anderson**

Senate Sponsor: \_\_\_\_\_

---

**LONG TITLE****General Description:**

This bill modifies parts of the Utah Code to make technical corrections including alphabetizing definitions, updating cross references, and correcting numbering.

**Highlighted Provisions:**

This bill:

- modifies parts of the Utah Code to make technical corrections including alphabetizing definitions, updating cross references, and correcting numbering.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:****AMENDS:**

**3-1-2**, Utah Code Annotated 1953

**3-1-4**, Utah Code Annotated 1953

**3-1-8**, Utah Code Annotated 1953

**3-1-19**, Utah Code Annotated 1953

**3-1-21**, as last amended by Laws of Utah 1984, Chapter 66

**3-1-45**, as enacted by Laws of Utah 1994, Chapter 204

**4-1-8**, as last amended by Laws of Utah 2000, Chapter 18



28        **4-8-4**, as enacted by Laws of Utah 1979, Chapter 2  
29        **4-16-2**, as last amended by Laws of Utah 1997, Chapter 81  
30        **4-16-7**, as last amended by Laws of Utah 1997, Chapter 81  
31        **4-17-3.5**, as last amended by Laws of Utah 1997, Chapter 82  
32        **4-19-2**, as last amended by Laws of Utah 2009, Chapter 260  
33        **4-23-4**, as last amended by Laws of Utah 1996, Chapter 243  
34        **4-24-4**, as last amended by Laws of Utah 1996, Chapter 243  
35        **4-24-10**, as last amended by Laws of Utah 1997, Chapter 302  
36        **4-32-4**, as last amended by Laws of Utah 1997, Chapter 302  
37        **4-32-7**, as last amended by Laws of Utah 2008, Chapter 382  
38        **4-38-8**, as last amended by Laws of Utah 1993, Chapter 64  
39        **7-2-7**, as last amended by Laws of Utah 2000, Chapter 260  
40        **7-7-15**, as last amended by Laws of Utah 1989, Chapter 267  
41        **7-9-30**, as last amended by Laws of Utah 1990, Chapter 93  
42        **7-9-43**, as last amended by Laws of Utah 1996, Chapter 243  
43        **7-9-53**, as last amended by Laws of Utah 2003, Chapter 327  
44        **7-15-2**, as last amended by Laws of Utah 2007, Chapter 87  
45        **8-4-2**, as last amended by Laws of Utah 2000, Chapter 167  
46        **9-3-410**, as last amended by Laws of Utah 2008, Chapter 382  
47        **9-4-202**, as last amended by Laws of Utah 2008, Chapter 382  
48        **9-6-305**, as last amended by Laws of Utah 1996, Chapter 243  
49        **9-6-505**, as renumbered and amended by Laws of Utah 1992, Chapter 241  
50        **9-7-204**, as last amended by Laws of Utah 1996, Chapters 194 and 243  
51        **9-8-705**, as enacted by Laws of Utah 1991, Chapter 121  
52        **11-32-3.5**, as enacted by Laws of Utah 1995, Chapter 235  
53        **11-32-15**, as enacted by Laws of Utah 1987, Chapter 143  
54        **13-11-21**, as enacted by Laws of Utah 1973, Chapter 188  
55        **13-28-2**, as enacted by Laws of Utah 1995, Chapter 196  
56        **16-10a-705**, as enacted by Laws of Utah 1992, Chapter 277  
57        **16-10a-906**, as enacted by Laws of Utah 1992, Chapter 277  
58        **16-10a-1325**, as enacted by Laws of Utah 1992, Chapter 277

59        **17-36-5**, as last amended by Laws of Utah 1996, Chapters 212 and 243  
60        **19-2-109.2**, as last amended by Laws of Utah 1996, Chapter 243  
61        **19-2-113**, as renumbered and amended by Laws of Utah 1991, Chapter 112  
62        **19-5-115**, as last amended by Laws of Utah 1998, Chapter 271  
63        **19-6-108.5**, as enacted by Laws of Utah 1992, Chapter 282  
64        **19-6-316**, as last amended by Laws of Utah 1995, Chapter 324  
65        **19-6-318**, as last amended by Laws of Utah 1995, Chapter 324  
66        **19-6-325**, as enacted by Laws of Utah 1991, Chapter 194  
67        **19-6-402**, as last amended by Laws of Utah 2005, Chapter 200  
68        **19-6-703**, as last amended by Laws of Utah 2000, Chapter 1  
69        **19-6-706**, as enacted by Laws of Utah 1993, Chapter 283  
70        **20A-1-703**, as last amended by Laws of Utah 1997, Chapter 296  
71        **20A-3-307**, as enacted by Laws of Utah 1993, Chapter 1  
72        **20A-7-501**, as renumbered and amended by Laws of Utah 1994, Chapter 272  
73        **23-14-2.6**, as last amended by Laws of Utah 1997, Chapter 276  
74        **23-22-2**, as last amended by Laws of Utah 1992, Chapter 86  
75        **26-18-102**, as last amended by Laws of Utah 1996, Chapter 243  
76        **26A-1-111**, as last amended by Laws of Utah 2002, Chapter 249  
77        **31A-5-217.5**, as enacted by Laws of Utah 1992, Chapter 230  
78        **31A-8-103**, as last amended by Laws of Utah 2004, Chapters 2 and 90  
79        **31A-15-202**, as enacted by Laws of Utah 1992, Chapter 258  
80        **31A-16-106**, as repealed and reenacted by Laws of Utah 1992, Chapter 258  
81        **31A-17-506**, as last amended by Laws of Utah 2002, Chapter 308  
82        **36-20-2**, as enacted by Laws of Utah 1993, Chapter 282  
83        **39-1-1**, as last amended by Laws of Utah 1989, Chapter 15  
84        **40-6-6.5**, as enacted by Laws of Utah 1992, Chapter 34  
85        **40-6-9**, as last amended by Laws of Utah 1993, Chapter 151  
86        **40-10-3**, as last amended by Laws of Utah 1997, Chapter 99  
87        **40-10-18**, as last amended by Laws of Utah 1997, Chapter 49  
88        **41-1a-510**, as enacted by Laws of Utah 1992, Chapter 1 and last amended by Laws of  
89        Utah 1992, Chapter 218

90        **41-1a-1001**, as last amended by Laws of Utah 1994, Chapter 184  
91        **41-1a-1002**, as last amended by Laws of Utah 1994, Chapter 184  
92        **41-3-106**, as last amended by Laws of Utah 1996, Chapter 243  
93        **48-2a-402**, as last amended by Laws of Utah 1991, Chapter 189  
94        **52-3-1**, as last amended by Laws of Utah 1988, Chapter 25  
95        **53-3-213**, as renumbered and amended by Laws of Utah 1993, Chapter 234  
96        **53-3-225**, as last amended by Laws of Utah 1993, Second Special Session, Chapter 5  
97        **53-3-416**, as renumbered and amended by Laws of Utah 1993, Chapter 234  
98        **53-3-908**, as last amended by Laws of Utah 1996, Chapter 243  
99        **53-5-703**, as last amended by Laws of Utah 1997, Chapters 10 and 280  
100       **53-6-108**, as renumbered and amended by Laws of Utah 1993, Chapter 234  
101       **53-6-302**, as enacted by Laws of Utah 1995, Chapter 134  
102       **53-7-102**, as renumbered and amended by Laws of Utah 1993, Chapter 234  
103       **53-7-222**, as last amended by Laws of Utah 1997, Chapter 82  
104       **53-7-309**, as renumbered and amended by Laws of Utah 1993, Chapter 234  
105       **53-7-315**, as renumbered and amended by Laws of Utah 1993, Chapter 234  
106       **53-10-211**, as renumbered and amended by Laws of Utah 1998, Chapter 263  
107       **53A-26a-305**, as enacted by Laws of Utah 1994, Chapter 306  
108       **53B-12-104**, as enacted by Laws of Utah 1987, Chapter 167  
109       **53B-21-102**, as last amended by Laws of Utah 1997, Chapter 58  
110       **54-7-13.6**, as enacted by Laws of Utah 2009, Chapter 319  
111       **54-8b-13**, as enacted by Laws of Utah 1990, Chapter 141  
112       **56-1-18.5**, as last amended by Laws of Utah 1996, Chapter 122  
113       **57-11-7**, as last amended by Laws of Utah 1995, Chapter 180  
114       **58-1-201**, as last amended by Laws of Utah 1997, Chapter 10  
115       **58-41-4**, as last amended by Laws of Utah 1993, Chapter 297  
116       **58-54-3**, as last amended by Laws of Utah 1996, Chapters 232 and 243  
117       **58-57-7**, as last amended by Laws of Utah 2006, Chapter 106  
118       **58-73-401**, as last amended by Laws of Utah 1996, Chapter 175 and renumbered and  
119 amended by Laws of Utah 1996, Chapter 253  
120       **59-2-1114**, as last amended by Laws of Utah 2000, Chapter 47

121       **59-10-503**, as renumbered and amended by Laws of Utah 1987, Chapter 2  
122       **59-10-517**, as renumbered and amended by Laws of Utah 1987, Chapter 2  
123       **59-11-114**, as renumbered and amended by Laws of Utah 1987, Chapter 2  
124       **61-1-10**, as last amended by Laws of Utah 1991, Chapter 161  
125       **62A-3-206**, as last amended by Laws of Utah 1993, Chapter 176  
126       **63A-3-203**, as renumbered and amended by Laws of Utah 1993, Chapter 212  
127       **63A-4-103**, as renumbered and amended by Laws of Utah 1993, Chapter 212  
128       **63A-5-302**, as last amended by Laws of Utah 2008, Chapter 382  
129       **63J-1-602**, as enacted by Laws of Utah 2009, Chapter 368  
130       **63M-9-301**, as renumbered and amended by Laws of Utah 2008, Chapter 382  
131       **67-1-8.1**, as last amended by Laws of Utah 1996, Chapter 243  
132       **67-19a-201**, as last amended by Laws of Utah 1996, Chapters 194 and 243  
133       **67-21-3**, as last amended by Laws of Utah 1992, Chapter 187  
134       **70A-2a-219**, as enacted by Laws of Utah 1990, Chapter 197  
135       **70A-2a-529**, as last amended by Laws of Utah 1993, Chapter 237  
136       **70A-3-206**, as repealed and reenacted by Laws of Utah 1993, Chapter 237  
137       **70A-3-307**, as repealed and reenacted by Laws of Utah 1993, Chapter 237  
138       **70A-3-310**, as enacted by Laws of Utah 1993, Chapter 237  
139       **70A-3-502**, as repealed and reenacted by Laws of Utah 1993, Chapter 237  
140       **70A-4a-507**, as last amended by Laws of Utah 1993, Chapter 237  
141       **70A-8-106**, as repealed and reenacted by Laws of Utah 1996, Chapter 204  
142       **70A-8-202**, as repealed and reenacted by Laws of Utah 1996, Chapter 204  
143       **75-2-103**, as repealed and reenacted by Laws of Utah 1998, Chapter 39  
144       **75-2-302**, as repealed and reenacted by Laws of Utah 1998, Chapter 39  
145       **75-2-603**, as repealed and reenacted by Laws of Utah 1998, Chapter 39  
146       **75-2-606**, as repealed and reenacted by Laws of Utah 1998, Chapter 39  
147       **75-5-410**, as last amended by Laws of Utah 1997, Chapter 161  
148       **76-2-402**, as last amended by Laws of Utah 1994, Chapter 26  
149       **76-9-301.1**, as enacted by Laws of Utah 1987, Chapter 22  
150       **76-10-920**, as last amended by Laws of Utah 1995, Chapter 291  
151       **76-10-1219**, as last amended by Laws of Utah 1984, Chapter 66

152 **76-10-2101**, as enacted by Laws of Utah 1992, Chapter 245

153 **77-7-5**, as last amended by Laws of Utah 2002, Chapter 35

154 **77-23a-4**, as last amended by Laws of Utah 1994, Chapter 12

155 **77-23a-10**, as last amended by Laws of Utah 1994, Chapter 201

156 **78B-7-113**, as renumbered and amended by Laws of Utah 2008, Chapter 3

157 

---

---

*Be it enacted by the Legislature of the state of Utah:*

158 Section 1. Section **3-1-2** is amended to read:

159 **3-1-2. Definitions.**

160 As used in this act, unless the context or subject matter requires otherwise:

161 ~~[(a)]~~ (1) "Agricultural products" includes floricultural, horticultural, viticultural,  
162 forestry, nut, seed, ground stock, dairy, livestock, poultry, bee and any and all farm products.

163 ~~[(k)]~~ (2) "Articles" means the articles of incorporation.

164 ~~[(b)]~~ (3) "Association" means a corporation organized under this act, or a similar  
165 domestic corporation, or a foreign association or corporation if authorized to do business in this  
166 state, organized under any general or special act as a cooperative association for the mutual  
167 benefit of its members, as agricultural producers, and which confines its operation to purposes  
168 authorized by this act and restricts the return on the stock or membership capital and the  
169 amount of its business with nonmembers to the limits placed thereon by this act for  
170 associations organized hereunder.

171 ~~[(j)]~~ (4) "Board" means the board of directors.

172 ~~[(e)]~~ (5) "Domestic associations" means an association or corporation formed under the  
173 laws of this state.

174 ~~[(d)]~~ (6) "Foreign association" means an association or corporation not formed under  
175 the laws of this state.

176 ~~[(g)]~~ (7) "Member" includes the holder of a membership of which there shall be but  
177 one class, in an association without stock and the holder of common stock in an association  
178 organized with stock.

179 ~~[(i)]~~ (8) "Person" includes an individual, a partnership, a corporation and an  
180 association.

181 ~~[(h)]~~ (9) "Producer" means a person who produces agricultural products, or an

association of such persons.

~~[(e)]~~ (10) (a) "This act" means the "Uniform Agricultural Cooperative Association Act."

~~[(f)]~~ (b) Associations shall be classified as and deemed to be nonprofit corporations, inasmuch as their primary object is not to pay dividends on invested capital, but to render service and provide means and facilities by or through which the producers of agricultural products may receive a reasonable and fair return for their products.

Section 2. Section **3-1-4** is amended to read:

**3-1-4. Purposes.**

Such association may be organized for the purpose of engaging in any cooperative activity for producers of agricultural products in connection with:

~~[(a)]~~ (1) producing, assembling, marketing, buying or selling agricultural products, or harvesting, preserving, drying, processing, manufacturing, blending, canning, packing, ginning, grading, storing, warehousing, handling, shipping, or utilizing such products, or manufacturing or marketing the by-products thereof;

~~[(b)]~~ (2) seed and crop improvement, and soil conservation and rehabilitation;

~~[(c)]~~ (3) manufacturing, buying or supplying to its members and others, machinery, equipment, feed, fertilizer, coal, gasoline and other fuels, oils and other lubricants, seeds, and all other agricultural and household supplies;

~~[(d)]~~ (4) generating and distributing electrical energy and furnishing telephone service to its members and others;

~~[(e)]~~ (5) performing or furnishing business or educational services, on a co-operative basis, for or to its members; or

~~[(f)]~~ (6) financing any of the above enumerated activities.

Section 3. Section **3-1-8** is amended to read:

**3-1-8. Bylaws.**

The members of the association shall adopt bylaws not inconsistent with law or the articles, and they may alter and amend the same from time to time. Bylaws may be adopted, amended or repealed, at any regular meeting, or at any special meeting called for that purpose, by a majority vote of the members voting thereon. The bylaws may provide for:

~~[(a)]~~ (1) the time, place and manner of calling and conducting meetings of the

members, and the number of members that shall constitute a quorum;

~~[(b)]~~ (2) the manner of voting and the condition upon which members may vote at general and special meetings and by mail or by delegates elected by district groups or other associations;

~~[(c)]~~ (3) subject to any provision thereon in the articles and in this act, the number, qualifications, compensation, duties and terms of office of directors and officers; the time of their election and the mode and manner of giving notice thereof;

~~[(d)]~~ (4) the time, place and manner for calling and holding meetings of the directors and executive committee, and the number that shall constitute a quorum;

~~[(e)]~~ (5) rules consistent with law and the articles for the management of the association, the establishment of voting districts, the making of contracts, the issuance, retirement, and transfer of stock, and the relative rights, interests and preferences of members and shareholders;

~~[(f)]~~ (6) penalties for violations of the bylaws; and

~~[(g)]~~ (7) such additional provisions as shall be deemed necessary for the carrying out of the purposes of this act.

Section 4. Section **3-1-19** is amended to read:

**3-1-19. Association not in restraint of trade -- Right to disseminate information.**

~~[(a)]~~ (1) No association complying with the terms hereof shall be deemed to be a conspiracy, or a combination in restraint of trade, or an illegal monopoly; or be deemed to have been formed for the purpose of lessening competition or fixing prices arbitrarily, nor shall the contracts between the association and its members, or any agreement authorized in this act, be construed as an unlawful restraint of trade, or as part of a conspiracy or combination to accomplish an improper or illegal purpose or act.

~~[(b)]~~ (2) An association may acquire, exchange, interpret and disseminate to its members, to other cooperative associations, and otherwise, past, present, and prospective crop, market, statistical, economic, and other similar information relating to the business of the association, either directly or through an agent created or selected by it or by other associations acting in conjunction with it.

~~[(c)]~~ (3) An association may advise its members in respect to the adjustment of their current and prospective production of agricultural commodities and its relation to the

prospective volume of consumption, selling prices and existing or potential surplus, to the end that every market may be served from the most convenient productive areas under a program of orderly marketing that will assure adequate supplies without undue enhancement of prices or the accumulation of any undue surplus.

Section 5. Section **3-1-21** is amended to read:

**3-1-21. Existing associations continued under chapter.**

~~[(a)]~~ (1) This act shall be applicable to any existing association formed under any law of this state providing for the incorporation of agricultural cooperative associations, for a purpose for which an association may be formed under this act, and particularly to associations formed under the Agricultural Cooperative Association Act, and all such associations shall have and may exercise and enjoy all the rights, privileges, authority, powers, and capacity heretofore granted, and all such associations shall have and may also exercise and enjoy all the rights, privileges, authority, powers, and capacity granted or afforded under and in pursuance of this act to the same extent and effect as though organized hereunder.

~~[(b)]~~ (2) Any cooperative association heretofore organized by producers of agricultural products under ~~[Title 3,]~~ Chapter 1, General Provisions Relating to Agricultural Cooperative Associations, for purposes in this act provided, may bring itself under and within the terms of this act as if organized hereunder and may thereafter operate in pursuance of the terms hereof, and may exercise and enjoy all the rights, privileges, authority, powers, and capacity afforded and provided for under the terms of this act, by filing with the Division of Corporations and Commercial Code, a sworn statement signed by the president and secretary of such association, to the effect that by resolution of the board of directors of such association duly adopted, such association has elected to bring itself within the terms of this act.

Section 6. Section **3-1-45** is amended to read:

**3-1-45. Sale, mortgage, and lease of assets.**

(1) (a) The association may sell, lease, exchange, mortgage, pledge, dispose of, or repay a debt with any of the property and assets of an association, if this action is made in the usual and regular course of business of the association.

(b) The action taken under Subsection (1)(a) may be made upon the terms and conditions and for consideration as are authorized by the board of directors.

(2) Consideration may include money or property, real or personal, including shares of

any other association or corporation, domestic or foreign, as is authorized by the association's board of directors.

(3) If the articles of incorporation provide for the mortgage or pledge of the property of the association by its directors, then the mortgage or pledge of all, or substantially all, of the property or assets, with or without the good will of an association, is considered to be made in the usual and regular course of its business.

(4) If the action taken under Subsection (1) is not made in the usual regular course of the association's business, the action may still be taken if the following requirements are complied with:

(a) The board of directors shall adopt a resolution recommending the action, and the members shall vote at an annual or special meeting of members.

(b) Written or printed notice of the meeting shall be given to each member entitled to vote as provided in this chapter.

(c) (i) At the meeting in which the action is considered, the members may authorize the action described in Subsection (1) and set the terms, or may authorize the board of directors to set the terms, conditions, and consideration to be received by the association.

(ii) A two-thirds majority vote of the members is required to approve the action specified in Subsection (1).

(d) The board of directors may abandon the action, even if approved by the members, subject to the rights of third parties under any related contracts, without further action or approval by members.

Section 7. Section **4-1-8** is amended to read:

**4-1-8. General definitions.**

Subject to additional definitions contained in the chapters of this title which are applicable to specific chapters, as used in this title:

(1) "Agriculture" means the science and art of the production of plants and animals useful to man including the preparation of plants and animals for human use and disposal by marketing or otherwise.

(2) "Agricultural product" or "product of agriculture" means any product which is derived from agriculture, including any product derived from aquaculture as defined in Section 4-37-103.

(3) "Commissioner" means the commissioner of agriculture and food.

(4) "Department" means the Department of Agriculture and Food created [~~under Title 4,~~] in Chapter 2, Department - State Chemist - Enforcement.

(5) "Dietary supplement" has the meaning defined in the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 301 et seq.

(6) "Livestock" means cattle, sheep, goats, swine, horses, mules, poultry, domesticated elk as defined in Section 4-39-102, or any other domestic animal or domestic furbearer raised or kept for profit.

(7) "Organization" means a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal entity.

(8) "Person" means a natural person or individual, corporation, organization, or other legal entity.

Section 8. Section **4-8-4** is amended to read:

**4-8-4. Department functions, powers, and duties.**

The department has and shall exercise the following functions, powers, and duties, in addition to those specified in Chapter 1 [~~of this code~~], Short Title and General Provisions:

(1) general supervision over the marketing, sale, trade, advertising, storage, and transportation practices, used in buying and selling products of agriculture in Utah;

(2) conduct and publish surveys and statistical analyses with its own resources or with the resources of others through contract, regarding the cost of production for products of agriculture, including transportation, processing, storage, advertising, and marketing costs; regarding market locations, demands, and prices for such products; and regarding market forecasts;

(3) assist and encourage producers of products of agriculture in controlling current and prospective production and market deliveries in order to stabilize product prices at prices which assure reasonable profits for producers and at the same time ensure adequate market supplies; and

(4) actively solicit input from the public and from interested groups or associations, through public hearings or otherwise, to assist in making fair determinations with respect to the production, marketing, and consumption of products of agriculture.

Section 9. Section **4-16-2** is amended to read:

**4-16-2. Definitions.**

As used in this chapter:

(1) "Advertisement" means any representation made relative to seeds, plants, bulbs, or ground stock other than those on the label of a seed container, disseminated in any manner.

(2) "Agricultural seeds" mean seeds of grass, forage plants, cereal crops, fiber crops, sugar beets, seed potatoes, or any other kinds of seed or mixtures of seed commonly known within this state as agricultural or field seeds.

(3) "Flower seeds" mean seeds of herbaceous plants grown for their blooms, ornamental foliage, or other ornamental plants commonly known and sold under the name of flower seeds in this state.

(4) "Foundation seed," "registered seed," or "certified seed" means seed that is produced and labeled in accordance with procedures officially recognized by a seed certifying agency approved and accredited in this state.

(5) (a) "Hybrid" means the first generation seed of a cross produced by controlling pollination and by combining:

(i) two or more inbred lines;

(ii) one inbred or a single cross with an open-pollinated variety; or

(iii) two varieties or species, except open-pollinated varieties of corn, *Zea mays*.

(b) The second generation and subsequent generations from the crosses referred to in Subsection (5)(a) are not to be regarded as hybrids.

(c) Hybrid designations shall be treated as variety names.

(6) "Kind" means one or more related species or subspecies of seed which singly or collectively is known by one name, for example, corn, oats, alfalfa, and timothy.

(7) (a) "Label" means any written, printed, or graphic representation accompanying and pertaining to any seeds, plants, bulbs, or ground stock whether in bulk or in containers.

(b) "Label" includes representations on invoices, bills, and letterheads.

(8) "Lot" means a definite quantity of seed identified by a number or other mark, every part or bag of which is uniform within recognized tolerances.

(9) "Noxious-weed seeds" mean weed seeds declared noxious by the commissioner.

(10) "Pure seed," "germination," or other terms in common use for testing seeds for

purposes of labeling shall have ascribed to them the meaning set forth for such terms in the most recent edition of "Rules for Seed Testing" published by the Association of Official Seed Analysts.

(11) "Seeds for sprouting" means seeds sold for sprouting for salad or culinary purposes.

(12) "Sowing" means the placement of agricultural seeds, vegetable seeds, flower seeds, tree and shrub seeds, or seeds for sprouting in a selected environment for the purpose of obtaining plant growth.

(13) "Treated" means seed that has received an application of a substance to reduce, control, or repel certain disease organisms, fungi, insects or other pests which may attack the seed or its seedlings, or has received some other treatment to improve its planting value.

(14) "Tree and shrub seeds" mean seeds of woody plants commonly known and sold under the name of tree and shrub seeds in this state.

(15) "Variety" means a subdivision of a kind characterized by growth, yield, plant, fruit, seed, or other characteristic, which differentiate it from other plants of the same kind.

(16) "Vegetable seeds" mean seeds of crops grown in gardens or on truck farms that are generally known and sold under the name of vegetable seeds, plants, bulbs, and ground stocks in this state.

(17) "Weed seeds" mean seeds of any plant generally recognized as a weed within this state.

Section 10. Section **4-16-7** is amended to read:

**4-16-7. Inspection -- Samples -- Analysis -- Seed testing facilities to be maintained -- Rules to control offensive seeds -- Notice of offending seeds -- Warrants.**

(1) (a) The department shall periodically enter public or private premises from which seeds are distributed, offered, or exposed for sale to sample, inspect, analyze, and test agricultural, vegetable, flower, or tree and shrub seeds or seeds for sprouting distributed within this state to determine compliance with this chapter.

(b) To perform the duties specified in Subsection (1)(a), the department shall:

- (i) establish and maintain facilities for testing the purity and germination of seeds;
- (ii) prescribe by rule uniform methods for sampling and testing seeds; and
- (iii) establish fees for rendering service.

(2) The department shall prescribe by rule weed seeds and noxious weed seeds and fix the tolerances permitted for those offensive seeds.

(3) If a seed sample, upon analysis, fails to comply with this chapter, the department shall give written notice to that effect to any person who is distributing, offering, or exposing the seeds for sale. Nothing in this chapter, however, shall be construed as requiring the department to refer minor violations for criminal prosecution or for the institution of condemnation proceedings if it believes the public interest will best be served through informal action.

(4) The department may proceed immediately, if admittance is refused, to obtain an ex parte warrant from the nearest court of competent jurisdiction to allow entry upon the premises for the purpose of making inspections and obtaining samples.

Section 11. Section **4-17-3.5** is amended to read:

**4-17-3.5. Creation of State Weed Committee -- Membership -- Powers and duties -- Expenses.**

(1) There is created a State Weed Committee composed of five members, one member representing each of the following:

- (a) the Department of Agriculture and Food;
- (b) the Utah State University Agricultural Experiment Station;
- (c) the Utah State University Extension Service;
- (d) the Utah Association of Counties; and
- (e) private agricultural industry.

(2) The commissioner shall select the members of the committee from those nominated by each of the respective groups or agencies following approval by the Agricultural Advisory Board.

(3) (a) Except as required by Subsection (3)(b), as terms of current committee members expire, the commissioner shall appoint each new member or reappointed member to a four-year term.

(b) Notwithstanding the requirements of Subsection (3)(a), the commissioner shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the committee is appointed every two years.

431 (4) (a) Members may be removed by the commissioner for cause.

432 (b) When a vacancy occurs in the membership for any reason, the replacement shall be  
433 appointed for the unexpired term.

434 (5) The State Weed Committee shall:

435 (a) confer and advise on matters pertaining to the planning, implementation, and  
436 administration of the state noxious weed program;

437 (b) recommend names for membership on the committee; and

438 (c) serve as members of the executive committee of the Utah Weed Control  
439 Association.

440 (6) (a) (i) Members who are not government employees shall receive no compensation  
441 or benefits for their services, but may receive per diem and expenses incurred in the  
442 performance of the member's official duties at the rates established by the Division of Finance  
443 under Sections 63A-3-106 and 63A-3-107.

444 (ii) Members may decline to receive per diem and expenses for their service.

445 (b) (i) State government officer and employee members who do not receive salary, per  
446 diem, or expenses from their agency for their service may receive per diem and expenses  
447 incurred in the performance of their official duties from the committee at the rates established  
448 by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

449 (ii) State government officer and employee members may decline to receive per diem  
450 and expenses for their service.

451 (c) (i) Higher education members who do not receive salary, per diem, or expenses  
452 from the entity that they represent for their service may receive per diem and expenses incurred  
453 in the performance of their official duties from the committee at the rates established by the  
454 Division of Finance under Sections 63A-3-106 and 63A-3-107.

455 (ii) Higher education members may decline to receive per diem and expenses for their  
456 service.

457 (d) (i) Local government members who do not receive salary, per diem, or expenses  
458 from the entity that they represent for their service may receive per diem and expenses incurred  
459 in the performance of their official duties at the rates established by the Division of Finance  
460 under Sections 63A-3-106 and 63A-3-107.

461 (ii) Local government members may decline to receive per diem and expenses for their

service.

Section 12. Section **4-19-2** is amended to read:

**4-19-2. Department authorized to approve and make grants and loans, acquire property, or lease or operate property.**

The department, in conjunction with the administration of the rural rehabilitation program, may:

(1) approve and make a loan to a farm or agricultural cooperative association regulated under Title 3, [~~General Provisions Relating to Agricultural Associations~~] Uniform Agricultural Cooperative Association Act, subject to Section 4-19-3, including:

(a) taking security for the loan through a mortgage, trust deed, pledge, or other security device;

(b) purchasing a promissory note, real estate contract, mortgage, trust deed, or other instrument or evidence of indebtedness; and

(c) collecting, compromising, canceling, or adjusting a claim or obligation arising out of the administration of the rural rehabilitation program;

(2) purchase or otherwise obtain property in which the department has acquired an interest on account of a mortgage, trust deed, lien, pledge, assignment, judgment, or other means at any execution or foreclosure sale;

(3) operate or lease, if necessary to protect its investment, property in which it has an interest or sell or otherwise dispose of the property; and

(4) approve and make an education loan or an education grant to an individual for the purpose of attending a vocational school, college, or university to obtain additional education, qualifications, or skills.

Section 13. Section **4-23-4** is amended to read:

**4-23-4. Agricultural and Wildlife Damage Prevention Board created -- Composition -- Appointment -- Terms -- Vacancies -- Compensation.**

(1) There is created an Agricultural and Wildlife Damage Prevention Board composed of the commissioner and the director of the Division of Wildlife Resources, who shall serve, respectively, as the board's chair and vice chair, together with seven other members appointed by the governor to four-year terms of office as follows:

(a) one sheep producer representing wool growers of the state;

- (b) one cattle producer representing range cattle producers of the state;
- (c) one person from the United States Department of Agriculture;
- (d) one agricultural landowner representing agricultural landowners of the state;
- (e) one person representing wildlife interests in the state;
- (f) one person from the United States Forest Service; and
- (g) one person from the United States Bureau of Land Management.

(2) Appointees' term of office shall commence June 1.

(3) (a) Except as required by Subsection (3)(b), as terms of current board members expire, the governor shall appoint each new member or reappointed member to a four-year term.

(b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.

(4) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(5) Attendance of five members at a duly called meeting shall constitute a quorum for the transaction of official business. The board shall convene at the times and places prescribed by the chair or vice chair.

(6) (a) (i) Members who are not government employees shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) Members may decline to receive per diem and expenses for their service.

(b) (i) State government officer and employee members who do not receive salary, per diem, or expenses from their agency for their service may receive per diem and expenses incurred in the performance of their official duties from the board at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) State government officer and employee members may decline to receive per diem and expenses for their service.

Section 14. Section ~~4-24-4~~ is amended to read:

**4-24-4. Livestock Brand Board created -- Composition -- Terms -- Removal --  
Quorum for transaction of business -- Compensation -- Duties.**

(1) There is created the Livestock Brand Board consisting of seven members appointed by the governor as follows:

(a) four cattle ranchers recommended by the Utah Cattlemen's Association, one of whom shall be a feeder operator;

(b) one dairyman recommended by the Utah Dairymen's Association;

(c) one livestock market operator recommended jointly by the Utah Cattlemen's Association and the Utah Dairymen's Association and the Livestock Market Association; and

(d) one horse breeder recommended by the Utah Horse Council.

(2) If a nominee is rejected by the governor, the recommending association shall submit another nominee.

(3) (a) Except as required by Subsection (3)(b), as terms of current board members expire, the governor shall appoint each new member or reappointed member to a four-year term.

(b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.

(4) (a) A member may, at the discretion of the governor, be removed at the request of the association that recommended the appointment.

(b) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(5) One member elected by the board shall serve as chair for a term of one year and be responsible for the call and conduct of meetings of the Livestock Brand Board. Attendance of a simple majority of the members at a duly called meeting shall constitute a quorum for the transaction of official business.

(6) (a) Members shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(b) Members may decline to receive per diem and expenses for their service.

(7) The Livestock Brand Board with the cooperation of the department shall direct the procedures and policies to be followed in administering and enforcing this chapter.

Section 15. Section **4-24-10** is amended to read:

**4-24-10. Livestock on open range or outside enclosure to be marked or branded -- Cattle upon transfer of ownership to be marked or branded -- Exceptions.**

(1) (a) Except as provided in Subsections (1)(b) and [(†)] (c), no livestock shall forage upon an open range in this state or outside an enclosure unless they bear a brand or mark recorded in accordance with this chapter.

(b) Swine, goats, and unweaned calves or colts are not required to bear a brand or mark to forage upon open range or outside an enclosure.

(c) Domesticated elk may not forage upon open range or outside an enclosure under any circumstances as provided in Chapter 39 [~~of this title~~], Domesticated Elk Act.

(2) (a) Except as provided in Subsection (2)(b), all cattle, upon sale or other transfer of ownership, shall be branded or marked with the recorded brand or mark of the new owner within 30 days after transfer of ownership.

(b) No branding or marking, upon change of ownership, is required within the 30-day period for:

(i) unweaned calves;

(ii) registered or certified cattle;

(iii) youth project calves, if the number transferred is less than five; or

(iv) dairy cattle held on farms.

Section 16. Section **4-32-4** is amended to read:

**4-32-4. License required to operate slaughterhouse -- Slaughtering livestock except in slaughterhouse prohibited -- Exceptions -- Violation a misdemeanor.**

(1) No person shall operate a slaughterhouse in this state without a license issued by the department, nor shall any person, except in a licensed slaughterhouse, slaughter livestock as a business or assist other persons in the slaughter of livestock except as otherwise provided in Subsection (2) or (3).

(2) Except as provided in Subsection (3), a person who raises his own livestock or an employee of that person may slaughter livestock without a farm custom slaughter permit if:

(a) the livestock is slaughtered on property owned by that person;

(b) the livestock product derived from the slaughtered animal is consumed exclusively by that person or his immediate family, regular employees of that person, or nonpaying guests; and

(c) the livestock product is marked "Not For Sale."

(3) Domesticated elk may only be slaughtered as provided in this chapter and in Chapter 39 ~~[of this title]~~, Domesticated Elk Act.

(4) Farm custom slaughter may be performed by a person who holds a valid farm custom slaughter permit.

(5) Any person who violates this section, except as otherwise provided in Subsection ~~[(5)]~~ (6), is guilty of a class C misdemeanor.

(6) Any person who offers for sale or sells any uninspected livestock product is guilty of a class B misdemeanor.

Section 17. Section ~~4-32-7~~ is amended to read:

**4-32-7. Mandatory functions, powers, and duties of department prescribed.**

The department shall make rules pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, regarding the following functions, powers, and duties, in addition to those specified in ~~[Title 4,]~~ Chapter 1, ~~[Utah Agricultural Code]~~ Short Title and General Provisions, for the administration and enforcement of this chapter:

(1) The department shall require antemortem and postmortem inspections, quarantine, segregation, and reinspections by inspectors appointed for those purposes with respect to the slaughter of livestock and poultry and the preparation of livestock and poultry products at official establishments, except as provided in Subsection ~~4-32-8(13)~~.

(2) The department shall require that:

(a) livestock and poultry be identified for inspection purposes;

(b) livestock or poultry products, or their containers be marked or labeled as:

(i) "Utah Inspected and Passed" if, upon inspection, the products are found to be unadulterated; and

(ii) "Utah Inspected and Condemned" if, upon inspection, the products are found to be adulterated; and

(c) condemned products, which otherwise would be used for human consumption, be destroyed under the supervision of an inspector.

(3) The department shall prohibit or limit livestock products, poultry products, or other materials not prepared under inspection procedures provided in this chapter, from being brought into official establishments.

(4) The department shall require that labels and containers for livestock and poultry products:

(a) bear all information required under Section 4-32-3 if the product leaves the official establishment; and

(b) be approved prior to sale or transportation.

(5) For official establishments required to be inspected under Subsection (1), the department shall:

(a) prescribe sanitary standards;

(b) require experts in sanitation or other competent investigators to investigate sanitary conditions; and

(c) refuse to provide inspection service if the sanitary conditions allow adulteration of any livestock or poultry product.

(6) (a) The department shall require that any person engaged in a business referred to in Subsection (6)(b) shall:

(i) keep accurate records disclosing all pertinent business transactions;

(ii) allow inspection of the business premises at reasonable times and examination of inventory, records, and facilities; and

(iii) allow inventory samples to be taken after payment of their fair market value.

(b) Subsection (6)(a) shall refer to any person who:

(i) slaughters livestock or poultry;

(ii) prepares, freezes, packages, labels, buys, sells, transports, or stores any livestock or poultry products for human or animal consumption;

(iii) renders livestock or poultry; or

(iv) buys, sells, or transports any dead, dying, disabled, or diseased livestock or poultry, or parts of their carcasses that died by a method other than slaughter.

(7) (a) The department shall:

(i) adopt by reference rules and regulations under federal acts with changes that the commissioner considers appropriate to make the rules and regulations applicable to operations

and transactions subject to this chapter; and

(ii) promulgate any other rules considered necessary for the efficient execution of the provisions of this chapter, including rules of practice providing an opportunity for hearing in connection with the issuance of orders under Subsection (5) or under Subsection 4-32-8(1), (2), or (3) and prescribing procedures for proceedings in these cases.

(b) These procedures shall not preclude requiring that a label or container be withheld from use, or inspection be refused under Subsections (1) and (5), or Subsection 4-32-8(3), pending issuance of a final order in the proceeding.

(8) (a) To prevent the inhumane slaughtering of livestock and poultry, inspectors shall be appointed to examine and inspect methods of handling and slaughtering livestock and poultry.

(b) Inspection of new slaughtering establishments may be refused or temporarily suspended if livestock or poultry have been slaughtered or handled by any method not in accordance with the Humane Methods of Slaughter Act of 1978, Public Law 95-445.

(9) (a) The department shall require all livestock and poultry showing symptoms of disease during antemortem inspection, performed by an inspector appointed for that purpose, to be set apart and slaughtered separately from other livestock and poultry.

(b) When slaughtered, the carcasses of livestock and poultry shall be subject to careful examination and inspection in accordance with rules prescribed by the commissioner.

Section 18. Section **4-38-8** is amended to read:

**4-38-8. Stewards.**

(1) (a) The commission may delegate authority to enforce its rules and this chapter to three stewards employed by the commission at each recognized race meet. At least one of them shall be selected by the commission.

(b) Stewards shall exercise reasonable and necessary authority as designated by rules of the commission including the following:

(i) enforce rules of the commission;

(ii) rule on the outcome of events;

(iii) evict from an event any person who has been convicted of bookmaking, bribery, or attempts to alter the outcome of any race through tampering with any animal that is not in accordance with this chapter or the rules of the commission;

(iv) levy fines not to exceed \$2,500 for violations of rules of the commission, which fines shall be reported daily and paid to the commission within 48 hours of imposition and notice;

(v) suspend licenses not to exceed one year for violations of rules of the commission, which suspension shall be reported to the commission daily; and

(vi) recommend that the commission impose fines or suspensions greater than permitted by Subsections (1)(b)(iv) and (v).

(2) If a majority of the stewards agree, they may impose fines or suspend licenses.

(3) (a) Any fine or license suspension imposed by a steward may be appealed in writing to the commission within five days after its imposition. The commission may affirm or reverse the decision of a steward or may increase or decrease any fine or suspension.

(b) A fine imposed by the commission under this section or Section 4-38-9 may not exceed \$10,000.

(c) Suspensions of a license may be for any period of time but shall be commensurate with the seriousness of the offense.

Section 19. Section 7-2-7 is amended to read:

**7-2-7. Stay of proceedings against institution -- Relief.**

(1) Except as otherwise specified, a taking of an institution or other person by the commissioner or a receiver or liquidator appointed by the commissioner under this chapter operates as a stay of the commencement or continuation of the following with respect to the institution:

- (a) any judicial, administrative, or other proceeding, including service of process;
- (b) the enforcement of any judgment;
- (c) any act to obtain possession of property;
- (d) any act to create, perfect, or enforce any lien against property of the institution;
- (e) any act to collect, assess, or recover a claim against the institution; and
- (f) the setoff of any debt owing to the institution against any claim against the institution.

(2) Except as provided in Subsections (3), (4), (5), and (8):

(a) the stay of any action against property of the institution continues until the institution has no interest in the property; and

(b) the stay of any other action continues until the earlier of when the case is:

(i) closed; or

(ii) dismissed.

(3) On the motion of any party in interest and after notice and a hearing, the court may terminate, annul, modify, condition, or otherwise grant relief from the stay:

(a) for cause, including the lack of adequate protection of an interest in property of the party in interest; or

(b) with respect to a stay of any action against property if:

(i) the institution does not have an equity interest in the property; and

(ii) the property would have no value in a reorganization or liquidation of the institution.

(4) (a) Thirty days after a request under Subsection (3) for relief from the stay of any act against property of the institution, the stay is terminated with respect to the party in interest making the request unless the court, after notice and a hearing, orders the stay continued in effect pending the conclusion of, or as a result of, a final hearing and determination under Subsection (3).

(b) A hearing under this Subsection (4) may be:

(i) a preliminary hearing; or

(ii) consolidated with the final hearing under Subsection (3).

(c) The court shall order the stay continued in effect pending the conclusion of the final hearing under Subsection (3) if there is a reasonable likelihood that the party opposing relief from the stay will prevail at the conclusion of the final hearing.

(d) If the hearing under this Subsection (4) is a preliminary hearing, the final hearing shall be commenced not later than 30 days after the conclusion of the preliminary hearing.

(5) Upon request of a party in interest, the court, with or without a hearing, may grant relief from the stay provided under Subsection (1) to the extent necessary to prevent irreparable damage to the interest of an entity in property, if the interest will or could be damaged before there is an opportunity for notice and a hearing under Subsection (3) or (4).

(6) In any hearing under Subsection (3) or (4) concerning relief from the stay of any act under Subsection (1):

(a) the party requesting relief has the burden of proof on the issue of the institution's

equity in property; and

(b) the party opposing relief has the burden of proof on all other issues.

(7) A person injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees and, when appropriate, may recover punitive damages.

(8) Nothing in this section prevents the holder or the trustee for any holder of any bond, note, debenture, or other evidence of indebtedness issued by a city, county, municipal corporation, commission, district, authority, agency, subdivision, or other public body pursuant to Title 11, Chapter 17, Utah Industrial Facilities and Development Act, from exercising any rights it may have to sell, take possession of, foreclose upon, or enforce a lien against or security interest in property of an institution that has been pledged, assigned, or mortgaged as collateral for that bond, note, debenture, or evidence of indebtedness, or as collateral for a letter of credit or other instrument issued in support of that bond, note, debenture, or evidence of indebtedness.

(9) Notice of any hearing under this section shall be served as provided in Subsection 7-2-9(6).

Section 20. Section 7-7-15 is amended to read:

**7-7-15. Fiduciary relationship of directors and officers to association --  
Disclosure requirements -- Prohibitions -- Violations as misdemeanors.**

(1) (a) Directors and officers occupy fiduciary relationships to the association of which they are directors or officers. No director or officer may engage or participate, directly or indirectly, in any business or transaction conducted on behalf of or involving the association, which would result in a conflict of his own personal interests with those of the association which he serves, unless:

(i) the business or transactions are conducted in good faith and are honest, fair, and reasonable to the association;

(ii) a full disclosure of the business or transactions and the nature of the director's or officer's interest is made to the board of directors;

(iii) the business or transactions are approved in good faith by the board of directors, any interested director abstaining; and

(iv) the business or transactions do not represent a breach of the officer's or director's

772 fiduciary duty and are not fraudulent, illegal, or ultra vires.

773 (b) Without limitation by any of the specific provisions of this section, the supervisor  
774 may require the disclosure by directors, officers and employees of their personal interest, direct  
775 or indirect, in any business or transaction on behalf of or involving the association and of their  
776 control of or active participation in enterprises having activities related to the business of the  
777 association.

778 (2) The following express restrictions governing the conduct of directors and officers  
779 of associations shall apply, but shall not be construed in any manner as excusing those persons  
780 from the observance of any other aspect of the general fiduciary duty owed by them to the  
781 association which they serve:

782 (a) No officer or director of an association may, without the prior written approval of  
783 the commissioner, serve as a director or officer of another savings institution, the principal  
784 office of which is located in the same community as an office of the association, unless he  
785 served as director or officer of both institutions before the effective date of this act.

786 (b) A director may not receive remuneration as a director, except reasonable fees for  
787 service as a director or for service as a member of a committee of directors. This Subsection  
788 (2)(b) does not prohibit or in any way limit any right of a director who is also an officer,  
789 employee, or attorney for the association to receive compensation for service as an officer,  
790 employee, or attorney.

791 (c) No director or officer may have any interest, directly or indirectly, in the proceeds  
792 of a loan or investment or of a purchase or sale made by the association, unless the loan,  
793 investment, purchase, or sale is authorized expressly by resolution of the board of directors,  
794 and unless the resolution is approved by vote of at least two-thirds of the directors authorized  
795 of the association, any interested director taking no part in the vote.

796 (d) No director or officer may have any interest, direct or indirect, in the purchase at  
797 less than its face value of any evidence of a savings account, deposit or other indebtedness  
798 issued by the association.

799 (e) An association or a director, officer, or employee of an association may not require,  
800 as a condition to the granting of any loan or the extension of any other service by the  
801 association, that the borrower or any other person undertake a contract of insurance or any  
802 other agreement or understanding with respect to the furnishing of any other goods or services,

with any specific company, agency, or individual.

(f) No officer or director acting as proxy for a member or stockholder of an association may exercise, transfer, or delegate the proxy vote or votes in consideration of a private benefit or advantage, direct or indirect, accruing to himself, nor may he surrender control or pass his office to any other for any consideration of a private benefit or advantage, direct or indirect. The voting rights of members and directors may not be the subject of sale, barter, exchange, or similar transaction, either directly or indirectly. Any officer or director who violates this Subsection (2)(f) shall be held accountable to the association for any increment.

(g) No director or officer may solicit, accept, or agree to accept, directly or indirectly, from any person other than the association any gratuity, compensation or other personal benefit for any action taken by the association or for endeavoring to procure any such action.

(h) Any person violating any of the specific prohibitions set forth in Subsections (2)(a) through (g) is guilty of a class C misdemeanor.

Section 21. Section 7-9-30 is amended to read:

**7-9-30. Reserve requirements -- "Risk assets" defined.**

(1) As used in this section, the words "risk assets" means all assets except the following:

(a) cash on hand;

(b) deposits and shares in federal or state banks, savings and loan associations, and credit unions;

(c) assets which are insured by any agency of the federal government, the Federal National Mortgage Association, or the Government Mortgage Association;

(d) loans to students insured under Title IV, Part B of the Higher Education Act of 1965, 20 U.S.C. Sections 1071 et seq. or similar state insurance programs;

(e) loans insured under Title 1 of the National Housing Act, 12 U.S.C. Sections 1702 et seq. by the Federal Housing Administration;

(f) shares or deposits in corporate credit unions as provided in Section 7-9-44, or of any other state act, or of the Federal Credit Union Act;

(g) accrued interest on nonrisk investments; and

(h) loans fully guaranteed by shares or deposits.

(2) At the end of each accounting period, after payment of any interest refunds, the

credit union shall determine the gross income from member loans and from this amount shall set aside a regular reserve in accordance with Subsections (2)(a), (b), and (c).

(a) A credit union in operation for more than four years and having assets of \$500,000 or more shall set aside a minimum of 10% of gross income from member loans until the regular reserve equals at least 4% of the total of outstanding loans and risk assets, then a minimum of 5% of gross income from member loans until the regular reserve equals at least 6% of the total of outstanding loans and risk assets.

(b) A credit union in operation for less than four years or having assets of less than \$500,000 shall set aside a minimum of 10% of gross income from member loans until the regular reserve equals at least 7-1/2% of the total of outstanding loans and risk assets, then a minimum of 5% of gross income from member loans until the regular reserve equals at least 10% of the total of outstanding loans and risk assets.

(c) The regular reserve belongs to the credit union and shall be used to build equity and to meet contingencies or losses when authorized by the commissioner or the supervisor of credit unions.

(d) The commissioner may temporarily reduce or waive the requirements for the regular reserve placement if he finds it to be in the best interest of the credit union.

Section 22. Section **7-9-43** is amended to read:

**7-9-43. Board of Credit Union Advisors.**

There is created a Board of Credit Union Advisors of five members to be appointed by the governor.

(1) Members of the board shall be individuals who are familiar with and associated in the field of credit unions.

(2) At least three of the members shall be persons who have had three or more years of experience as a credit union officer and shall be selected from a list submitted to the governor by the Utah League of Credit Unions.

(3) The board shall meet quarterly.

(4) A chair of the advisory board shall be chosen each year from the membership of the advisory board by a majority of the members present at the board's first meeting each year.

(5) (a) Except as required by Subsection (5)(b), as terms of current board members expire, the governor shall appoint each new member or reappointed member to a four-year

865 term.

866 (b) Notwithstanding the requirements of Subsection (5)(a), the governor shall, at the  
867 time of appointment or reappointment, adjust the length of terms to ensure that the terms of  
868 board members are staggered so that approximately half of the board is appointed every two  
869 years.

870 (6) When a vacancy occurs in the membership for any reason, the replacement shall be  
871 appointed for the unexpired term.

872 (7) All members shall serve until their successors are appointed and qualified.

873 (8) (a) Members shall receive no compensation or benefits for their services, but may  
874 receive per diem and expenses incurred in the performance of the member's official duties at  
875 the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

876 (b) Members may decline to receive per diem and expenses for their service.

877 (9) Meetings of the advisory board shall be held on the call of the chair. A majority of  
878 the members of the board shall constitute a quorum.

879 (10) The Board of Credit Union Advisors has the duty to advise the governor and  
880 commissioner on problems relating to credit unions and to foster the interest and cooperation of  
881 credit unions in the improvement of their services to the people of the state of Utah.

882 Section 23. Section **7-9-53** is amended to read:

883 **7-9-53. Grandfathering.**

884 (1) As used in this section:

885 (a) "Association that resides in a domicile-county" means an association that:

886 (i) operates a place of business or other physical location in the domicile-county; or

887 (ii) has at least 100 members that are residents of the domicile-county.

888 (b) "Domicile-county" means the county:

889 (i) in the field of membership of the credit union as of January 1, 1999; and

890 (ii) in which the credit union has located the greatest number of branches as of January  
891 1, 1999.

892 (c) "Grandfathered field of membership" means the field of membership as of May 3,  
893 1999, of a credit union described in Subsection (2)(d).

894 (2) For each credit union formed before January 1, 1999, its field of membership as of  
895 May 3, 1999, is determined as follows:

(a) if the field of membership stated in the bylaws of the credit union as of January 1, 1999, complies with Section 7-9-51, the credit union's field of membership is the field of membership indicated in its bylaws;

(b) (i) the field of membership of a credit union as of May 3, 1999, is as provided in Subsection (2)(b)(ii) if:

(A) the field of membership stated in the bylaws of the credit union as of January 1, 1999, includes the residents of more than one county; and

(B) as of January 1, 1999, the credit union's main office and any of its branches are located in only one county in its field of membership;

(ii) as of May 3, 1999, the field of membership of a credit union described in Subsection (2)(b)(i) is:

(A) the immediate family of a member of the credit union;

(B) the employees of the credit union;

(C) residents of the one county in which the credit union has its main office or branches as of January 1, 1999[?]; and

(D) any association that as of January 1, 1999, is in the field of membership of the credit union;

(c) (i) the field of membership of a credit union as of May 3, 1999, is as provided in Subsection (2)(c)(ii) if:

(A) the field of membership of a credit union stated in the bylaws of the credit union as of January 1, 1999, includes residents of more than one county;

(B) as of January 1, 1999, the credit union has a main office or branch in more than one county; and

(C) as a result of a merger pursuant to a supervisory action under Chapter 2, Possession of Depository Institution by Commissioner, or Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies, that is effective on or after January 1, 1983, but before January 1, 1994, the credit union acquired a branch in a county in the field of membership of the credit union and the credit union did not have a branch in the county before the merger;

(ii) as of May 3, 1999, the field of membership of a credit union described in Subsection (2)(c)(i) is the same field of membership that the credit union would have had under Subsection (2)(d) except that the credit union:

927 (A) is not subject to Subsection (3); and  
928 (B) is subject to Subsection (4)(b); and  
929 (d) (i) the field of membership of a credit union as of May 3, 1999, is as provided in  
930 Subsection (2)(d)(ii) if:  
931 (A) the field of membership stated in the bylaws of the credit union as of January 1,  
932 1999, includes the residents of more than one county; and  
933 (B) as of January 1, 1999, the credit union has a main office or branch in more than one  
934 county;  
935 (ii) as of May 3, 1999, the field of membership of a credit union described in  
936 Subsection (2)(d)(i) is:  
937 (A) the immediate family of a member of the credit union;  
938 (B) the employees of the credit union;  
939 (C) residents of the credit union's domicile-county;  
940 (D) the residents of any county other than the domicile-county:  
941 (I) if, as of January 1, 1999, the county is in the field of membership of the credit  
942 union; and  
943 (II) in which, as of January 1, 1994, the credit union had located its main office or a  
944 branch; and  
945 (E) any association that as of January 1, 1999, is in the field of membership of the  
946 credit union.  
947 (3) If a credit union's field of membership is as described in Subsection (2)(d),  
948 beginning May 3, 1999, the credit union:  
949 (a) within the credit union's domicile-county, may establish, relocate, or otherwise  
950 change the physical location of the credit union's:  
951 (i) main office; or  
952 (ii) branch;  
953 (b) within a county other than a domicile-county that is in the credit union's  
954 grandfathered field of membership, may not:  
955 (i) establish a main office or branch that:  
956 (A) was not located in the county as of January 1, 1999; or  
957 (B) for which the credit union has not received by January 1, 1999, approval or

conditional approval of a site plan for the main office or branch from the planning commission of the municipality where the main office or branch will be located;

(ii) participate in a service center in which it does not participate as of January 1, 1999;

(iii) relocate the credit union's main office or a branch located in the county as of January 1, 1999, unless the commissioner finds that the main office or branch is relocated within a three-mile radius of where it was originally located; or

(iv) after a voluntary merger under Section 7-9-39, operate a branch in the county if:

(A) the effective date of the merger is on or after May 5, 2003;

(B) the credit union with the field of membership described in Subsection (2)(d) is the surviving credit union after the merger; and

(C) the credit union did not own and operate the branch before the effective date of the merger; and

(c) may only admit as a member:

(i) a person in the credit union's grandfathered field of membership; or

(ii) a person belonging to an association that:

(A) is added to the field of membership of the credit union; and

(B) resides in the domicile-county of the credit union.

(4) (a) If a credit union's field of membership is as described in Subsection (2)(b), as of May 3, 1999, the credit union may operate as a credit union having a field of membership under Section 7-9-51.

(b) If a credit union's field of membership is as described in Subsection (2)(c), as of May 3, 1999, the credit union:

(i) within the credit union's domicile-county, may establish, relocate, or otherwise change the physical location of the credit union's:

(A) main office; or

(B) branch;

(ii) within a county other than its domicile-county that is in the credit union's field of membership under Subsection (2)(c), may not:

(A) establish a main office or branch that was not located in the county as of January 1, 1999;

(B) participate in a service center in which it does not participate as of January 1, 1999;

989 or

990 (C) relocate the credit union's main office or a branch located in the county as of  
991 January 1, 1999, unless the commissioner finds that the main office or branch is relocated  
992 within a three-mile radius of where it was originally located; and

993 (iii) may only admit as a member:

994 (A) a person in the credit union's field of membership under Subsection (2)(c); or

995 (B) a person belonging to an association that is added to the field of membership of the  
996 credit union, regardless of whether the association resides in the domicile-county of the credit  
997 union.

998 (5) (a) Notwithstanding Subsections (1) through (4), after May 3, 1999, a credit union  
999 described in Subsection (2)(c) or ~~[(2)]~~ (d) may:

1000 (i) operate an office or branch that is operated by the credit union on May 3, 1999, but  
1001 that is not located in a county that is in the credit union's field of membership as of May 3,  
1002 1999; and

1003 (ii) serve a member who is not in a credit union's field of membership as of May 3,  
1004 1999, if the member is a member of the credit union as of March 15, 1999.

1005 (b) Subsection (5)(a) does not authorize a credit union to:

1006 (i) establish a branch in a county that is not in the credit union's field of membership as  
1007 of May 3, 1999, unless the branch meets the requirements under this title for establishing a  
1008 branch; or

1009 (ii) for a credit union described in Subsection (2)(d), include in its field of membership  
1010 an association that:

1011 (A) as of January 1, 1999, is not included in the credit union's field of membership; and

1012 (B) does not reside within the credit union's domicile-county.

1013 (6) A credit union shall amend its bylaws in accordance with Section 7-9-11 by no later  
1014 than August 3, 1999, to comply with this section.

1015 (7) In addition to any requirement under this section, a credit union shall comply with  
1016 any requirement under this title for the establishment, relocation, or change in the physical  
1017 location of a main office or branch of a credit union.

1018 Section 24. Section **7-15-2** is amended to read:

1019 **7-15-2. Notice -- Form.**

1020 (1) (a) "Notice" means notice given to the issuer of a check either orally or in writing.  
1021 (b) Written notice may be given by United States mail that is:  
1022 (i) first class; and  
1023 (ii) postage prepaid.  
1024 (c) Notwithstanding Subsection (1)(b), written notice is conclusively presumed to have  
1025 been given when the notice is:  
1026 (i) properly deposited in the United States mail;  
1027 (ii) postage prepaid;  
1028 (iii) certified or registered mail;  
1029 (iv) return receipt requested; and  
1030 (v) addressed to the signer at the signer's:  
1031 (A) address as it appears on the check; or  
1032 (B) last-known address.  
1033 (2) Written notice under Subsection 7-15-1(5) shall take substantially the following  
1034 form:  
1035 "Date: \_\_\_\_  
1036 To: \_\_\_\_  
1037 You are hereby notified that the check(s) described below issued by you has (have)  
1038 been returned to us unpaid:  
1039 Check date: \_\_\_\_  
1040 Check number: \_\_\_\_  
1041 Originating institution: \_\_\_\_  
1042 Amount: \_\_\_\_  
1043 Reason for dishonor (marked on check): \_\_\_\_  
1044 In accordance with Section 7-15-1, Utah Code Annotated, you are liable for this check  
1045 together with a service charge of \$20, which must be paid to the undersigned.  
1046 If you do not pay the check amount and the \$20 service charge within 15 calendar days  
1047 from the day on which this notice was mailed, you are required to pay within 30 calendar days  
1048 from the day on which this notice is mailed:  
1049 (1) the check amount;  
1050 (2) the \$20 service charge; and

1051 (3) collection costs not to exceed \$20.

1052 If you do not pay the check amount, the \$20 service charge, and the collection costs  
1053 within 30 calendar days from the day on which this notice is mailed, in accordance with  
1054 Section 7-15-1, Utah Code Annotated, an appropriate civil legal action may be filed against  
1055 you for:

1056 (1) the check amount;

1057 (2) interest;

1058 (3) court costs;

1059 (4) attorneys' fees;

1060 (5) actual costs of collection as provided by law; and

1061 (6) damages in an amount equal to the greater of \$100 or triple the check amount,

1062 except:

1063 (a) that damages recovered under this Subsection (6) may not exceed the check amount  
1064 by more than \$500; and

1065 (b) you are not liable for these damages for a check used to obtain a deferred deposit  
1066 loan.

1067 In addition, the criminal code provides in Section 76-6-505, Utah Code Annotated, that  
1068 any person who issues or passes a check for the payment of money, for the purpose of  
1069 obtaining from any person, firm, partnership, or corporation, any money, property, or other  
1070 thing of value or paying for any services, wages, salary, labor, or rent, knowing it will not be  
1071 paid by the drawee and payment is refused by the drawee, is guilty of issuing a bad check.

1072 The civil action referred to in this notice does not preclude the right to prosecute under  
1073 the criminal code of the state.

1074 (Signed) \_\_\_\_\_

1075 Name of Holder: \_\_\_\_\_

1076 Address of Holder: \_\_\_\_\_

1077 Telephone Number: \_\_\_\_\_"

1078 (3) Notwithstanding the other provisions of this section, a holder exempt under  
1079 Subsection 7-15-1(9) is exempt from this section.

1080 Section 25. Section **8-4-2** is amended to read:

1081 **8-4-2. Endowment care cemetery trust funds -- Deposits in endowment fund --**

**Reports -- Penalties for failure to file -- Investment of trust fund monies -- Attestation.**

(1) An endowment care cemetery shall establish an endowment care trust fund pursuant to Title 75, Chapter 7, [~~Trust Administration~~] Utah Uniform Trust Code.

(a) Any newly established endowment care cemetery or existing cemetery converting to an endowment care cemetery shall deposit a minimum of \$25,000 in the endowment care trust fund.

(b) Each endowment care cemetery shall deposit in the endowment care trust fund for each plot space sold or disposed of a minimum of:

(i) \$1.50 a square foot for each grave;

(ii) \$15 for each niche; and

(iii) \$60 for each crypt.

(2) (a) An endowment care cemetery shall collect endowment care funds only pursuant to a written contract of sale signed by the endowment care cemetery and the purchaser.

(b) The contract of sale shall specify the terms of the endowment care trust consistent with this section and the terms of payment.

(c) If requested by the purchaser, a copy of the endowment care trust shall be provided to the purchaser.

(3) (a) Each endowment care cemetery shall prepare an annual written report for the benefit of its trustor lot holders.

(b) The report shall contain:

(i) information determined to be reasonable and necessary to show compliance with the provisions of this chapter;

(ii) the number and square feet of grave space;

(iii) the number of crypts and niches sold or disposed of under endowment care during a specific period; and

(iv) the dollar amount of sales, amounts paid, amounts receivable, and amounts deposited in endowment care funds for crypts, niches, and grave space during a specific period, set forth on the accrual basis as determined by the cemetery authority.

(c) An officer of the endowment care cemetery authority shall verify the report.

(d) The report shall be on file in the principal office of the endowment care cemetery and shall be made available upon request.

(e) The report shall be completed by the 15th day of the third month following the end of the endowment care cemetery's fiscal year.

(4) An officer, director, partner, proprietor, or other person having control of the records of an endowment care cemetery shall provide the reports and records necessary to comply with the provisions of this chapter.

(5) A person is guilty of a class A misdemeanor who willfully and intentionally fails to:

(a) deposit funds collected as endowment care funds into the endowment care trust within 30 days of receipt of the funds; or

(b) prepare the report required by Subsection (3).

(6) Endowment care funds may be invested separately or together. The investment income shall be divided between the funds in the proportion that each contributed to the invested amount.

(7) Endowment care funds shall be invested in accordance with Section 31A-18-105 and Title 75, Chapter 7, ~~[Trust Administration]~~ Utah Uniform Trust Code.

(8) (a) An endowment care cemetery shall place endowment care funds with an independent trustee appointed by the endowment care cemetery.

(b) A trustee may be independent even if it has common ownership with the cemetery.

(c) The independent trustee shall be a depository institution, as defined by Section 7-1-103, or an insurer, as defined in Section 31A-1-301.

(9) (a) The trustee shall submit to the endowment care cemetery an annual independent attestation of the endowment care trust funds.

(b) The attestation shall state:

(i) the total amount of the general and special endowment care funds invested by law;

(ii) the amount of cash on hand not invested;

(iii) the location, description, and character of the investments in which the special endowment care funds are invested;

(iv) the value of any securities held in the endowment care fund; and

(v) the actual financial condition of the funds.

(10) (a) A trustee may not receive compensation for services and expenses, including audits, in excess of 5% of the income derived from an endowment care fund in any year.

(b) If there are insufficient funds from the income derived from the endowment care

trust fund to pay for the attestation of the endowment care funds, the endowment care cemetery shall pay amounts due from funds other than the endowment care trust fund or income derived from that fund.

(11) The income from an endowment care fund shall be used for the care, maintenance, and embellishment of the cemetery as determined by the endowment care cemetery, and to pay for administering the fund.

Section 26. Section **9-3-410** is amended to read:

**9-3-410. Relation to certain acts.**

(1) The authority is exempt from:

(a) Title 51, Chapter 5, Funds Consolidation Act;

(b) Title 63A, Chapter 1, [~~Utah~~] Department of Administrative Services [~~Code~~];

(c) Title 63G, Chapter 6, Utah Procurement Code;

(d) Title 63J, Chapter 1, Budgetary Procedures Act; and

(e) Title 67, Chapter 19, Utah State Personnel Management Act.

(2) The authority shall be subject to audit by:

(a) the state auditor pursuant to Title 67, Chapter 3, Auditor; and

(b) the legislative auditor general pursuant to Section 36-12-15.

(3) The authority shall annually report to the Retirement and Independent Entities Committee created under Section 63E-1-201 concerning the authority's implementation of this part.

Section 27. Section **9-4-202** is amended to read:

**9-4-202. Powers and duties of division.**

(1) The division shall:

(a) assist local governments and citizens in the planning, development, and maintenance of necessary public infrastructure and services;

(b) cooperate with, and provide technical assistance to, counties, cities, towns, regional planning commissions, area-wide clearinghouses, zoning commissions, parks or recreation boards, community development groups, community action agencies, and other agencies created for the purpose of aiding and encouraging an orderly, productive, and coordinated development of the state and its political subdivisions;

(c) assist the governor in coordinating the activities of state agencies which have an

1175 impact on the solution of community development problems and the implementation of  
1176 community plans;

1177 (d) serve as a clearinghouse for information, data, and other materials which may be  
1178 helpful to local governments in discharging their responsibilities and provide information on  
1179 available federal and state financial and technical assistance;

1180 (e) carry out continuing studies and analyses of the problems faced by communities  
1181 within the state and develop such recommendations for administrative or legislative action as  
1182 appear necessary;

1183 (f) assist in funding affordable housing and addressing problems of homelessness;

1184 (g) support economic development activities through grants, loans, and direct programs  
1185 financial assistance;

1186 (h) certify project funding at the local level in conformance with federal, state, and  
1187 other requirements;

1188 (i) utilize the capabilities and facilities of public and private universities and colleges  
1189 within the state in carrying out its functions;

1190 (j) assist and support local governments, community action agencies, and citizens in  
1191 the planning, development, and maintenance of home weatherization, energy efficiency, and  
1192 antipoverty activities; and

1193 (k) assist and support volunteer efforts in the state.

1194 (2) The division may:

1195 (a) by following the procedures and requirements of Title 63J, Chapter 5, Federal  
1196 Funds Procedures Act, seek federal grants, loans, or participation in federal programs;

1197 (b) if any federal program requires the expenditure of state funds as a condition to  
1198 participation by the state in any fund, property, or service, with the governor's approval, expend  
1199 whatever funds are necessary out of the money provided by the Legislature for the use of the  
1200 department;

1201 (c) in accordance with Part 13, Domestic Violence Shelters, assist in developing,  
1202 constructing, and improving shelters for victims of domestic violence, as described in Section  
1203 77-36-1, through loans and grants to nonprofit and governmental entities; and

1204 (d) assist, when requested by a county or municipality, in the development of  
1205 accessible housing.

(3) (a) The division is recognized as an issuing authority as defined in Subsection 9-4-502(7), entitled to issue bonds from the Small Issue Bond Account created in Subsection 9-4-506(1)(c) as a part of the state's private activity bond volume cap authorized by the Internal Revenue Code of 1986 and computed under Section 146 of the code.

(b) To promote and encourage the issuance of bonds from the Small Issue Bond Account for manufacturing projects, the division may:

(i) develop campaigns and materials that inform qualified small manufacturing businesses about the existence of the program and the application process;

(ii) assist small businesses in applying for and qualifying for these bonds; or

(iii) develop strategies to lower the cost to small businesses of applying for and qualifying for these bonds, including making arrangements with financial advisors, underwriters, bond counsel, and other professionals involved in the issuance process to provide their services at a reduced rate when the division can provide them with a high volume of applicants or issues.

Section 28. Section **9-6-305** is amended to read:

**9-6-305. Art collection committee.**

(1) The division shall appoint a committee of artists or judges of art to take charge of all works of art acquired under this chapter. This collection shall be known as the Utah State Alice Art Collection.

(2) (a) Except as required by Subsection (2)(b), as terms of current board members expire, the division shall appoint each new member or reappointed member to a four-year term.

(b) Notwithstanding the requirements of Subsection (2)(a), the division shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.

(3) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(4) (a) Members shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(b) Members may decline to receive per diem and expenses for their service.

Section 29. Section **9-6-505** is amended to read:

**9-6-505. Eligibility requirements of qualifying arts organizations -- Allocation limitations -- Matching requirements.**

(1) Any qualifying organization may apply to receive moneys from the state fund to be deposited in an endowment fund it has created under Subsection 9-6-503(1):

(a) if it has received a grant from the board during one of the three years immediately before making application for state fund moneys under this Subsection (1); or

(b) upon approval by the board if it has not received a grant from the board within the past three years.

(2) (a) The maximum amount that may be allocated to each qualifying organization from the state fund shall be determined by the board by calculating the average cash income of the qualifying organization during the past three fiscal years as contained in the qualifying organization's final reports on file with the board. The board shall notify each qualifying organization of the maximum amount of moneys from the state fund for which it qualifies.

(b) The minimum amount that may be allocated to each qualifying organization from the state fund is \$2,500.

(c) If the maximum amount for which the organization qualifies is less than \$2,500, the organization may still apply for \$2,500.

(3) After the board determines that a qualifying organization is eligible to receive moneys from the state fund and before any money is allocated to the qualifying organization from the state fund, the qualifying organization shall match the amount qualified for by moneys raised and designated exclusively for that purpose. State moneys, in-kind contributions, and preexisting endowment gifts may not be used to match moneys from the state fund.

(4) Endowment match moneys shall be based on a sliding scale as follows:

(a) any amount requested not exceeding \$100,000 shall be matched one-to-one;

(b) any additional amount requested that makes the aggregate amount requested exceed \$100,000 but not exceed \$500,000 shall be matched two-to-one; and

(c) any additional amount requested that makes the aggregate amount requested exceed \$500,000 shall be matched three-to-one.

(5) (a) Qualifying organizations shall raise the matching amount within three years after applying for moneys from the state fund by a date determined by the board.

(b) Moneys from the state fund shall be released to the qualifying organization only upon verification by the board that the matching money has been received on or before the date determined under Subsection (5)(a). Verification of matching funds shall be made by a certified public accountant.

(c) Moneys from the state fund shall be released to qualifying organizations with professional endowment management in increments not less than \$20,000 as audited confirmation of matching funds is received by the board.

(d) Moneys from the state fund shall be granted to each qualifying organization on the basis of the matching funds it has raised by the date determined under Subsection (5)(a).

Section 30. Section **9-7-204** is amended to read:

**9-7-204. State Library Board -- Members -- Meetings -- Expenses.**

(1) There is created within the department the State Library Board.

(2) (a) The board shall consist of nine members appointed by the governor.

(b) One member shall be appointed on recommendation from each of the following agencies:

(i) the State Office of Education;

(ii) the Board of Control of the State Law Library;

(iii) the Office of Legislative Research and General Counsel; and

(iv) the Utah System of Higher Education.

(c) Of the five remaining members at least two shall be appointed from rural areas.

(3) (a) Except as required by Subsection (3)(b), as terms of current board members expire, the governor shall appoint each new member or reappointed member to a four-year term.

(b) ~~[Notwithstanding the requirements of Subsection (a), the]~~ The governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.

(4) The members may not serve more than two full consecutive terms.

(5) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term in the same manner as originally appointed.

(6) Five members of the board constitute a quorum for conducting board business.

(7) The governor shall select one of the board members as chair who shall serve for a period of two years.

(8) The director of the State Library Division shall be executive officer of the board.

(9) (a) (i) Members who are not government employees shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) Members may decline to receive per diem and expenses for their service.

(b) (i) State government officer and employee members who do not receive salary, per diem, or expenses from their agency for their service may receive per diem and expenses incurred in the performance of their official duties from the board at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) State government officer and employee members may decline to receive per diem and expenses for their service.

(c) (i) Higher education members who do not receive salary, per diem, or expenses from the entity that they represent for their service may receive per diem and expenses incurred in the performance of their official duties from the committee at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) Higher education members may decline to receive per diem and expenses for their service.

Section 31. Section **9-8-705** is amended to read:

**9-8-705. Eligibility requirements of qualifying history organizations -- Allocation limitations -- Matching requirements.**

(1) Any qualifying organization may apply to receive monies from the state fund to be deposited in an endowment fund it has created under Section 9-8-703:

(a) if it has received a grant from the division during one of the three years immediately before making application for state fund monies under this Subsection (1); or

(b) if it has not received a grant from the division within the past three years, it may receive a grant upon approval by the division according to policy of the board.

(2) (a) The maximum amount that may be allocated to each qualifying organization from the state fund shall be determined by the division in a format to be developed in

consultation with the board.

(b) The minimum amount that may be allocated to each qualifying organization from the state fund is \$2,500.

(3) After the division determines that a qualifying organization is eligible to receive monies from the state fund and before any money is allocated to the qualifying organization from the state fund, the qualifying organization shall match the amount qualified for by monies raised and designated exclusively for that purpose. State monies and in-kind contributions may not be used to match monies from the state fund.

(4) Endowment match monies shall be based on a sliding scale as follows:

(a) amounts requested up to \$20,000 shall be matched one-to-one;

(b) any additional amount requested that makes the aggregate amount requested exceed \$20,000 but not exceed \$50,000 shall be matched two-to-one; and

(c) any additional amount requested that makes the aggregate amount requested exceed \$50,000 shall be matched three-to-one.

(5) (a) Qualifying organizations shall raise the matching amount by a date determined by the board.

(b) Monies from the state fund shall be released to the qualifying organization only upon verification by the division that the matching money has been received on or before the date determined under Subsection (5)(a). Verification of matching funds shall be made by a certified public accountant.

(c) Monies from the state fund shall be released to qualifying organizations with professional endowment management in increments not less than \$2,500 as audited confirmation of matching funds is received by the board.

(d) Monies from the state fund shall be granted to each qualifying organization on the basis of the matching funds it has raised by the date determined under Subsection (5)(a).

Section 32. Section **11-32-3.5** is amended to read:

**11-32-3.5. Entry into an established interlocal finance authority -- Withdrawal from an interlocal finance authority -- Effect of outstanding debt -- Effect on organization.**

(1) The governing body of any public body, which is not at that time a member of a financing authority established in the county in which the public body is located, may, by

1361 resolution, elect to join the authority.

1362 (2) The resolution shall state the name of the public body and that the public body  
1363 thereby petitions for membership in the authority. A certified copy of the resolution shall be  
1364 delivered to the authority.

1365 (3) The public body shall become a participant member of the authority, upon receipt  
1366 by the authority of the resolution, but only with respect to any financing initiated after the  
1367 public body has become a member of the authority.

1368 (4) A participant member may elect to withdraw from an authority by resolution  
1369 adopted by the governing body of the participant member following:

1370 (a) the payment of all outstanding bonds for which a participant member's delinquent  
1371 tax receivables have been assigned;

1372 (b) the distribution of remaining amounts as provided in Section 11-32-15; and

1373 (c) satisfactory completion of any independent accounting audits requested by the  
1374 authority or the county.

1375 (5) The resolution of the governing body of the public body which is withdrawing its  
1376 membership shall state the name of the public body it represents and that the public body  
1377 thereby petitions for withdrawal from the authority. A certified copy of the resolution shall be  
1378 delivered to the authority. The membership of the public body in the authority shall terminate  
1379 upon receipt of the resolution by the authority.

1380 (6) A public body which has withdrawn from membership in an authority may elect to  
1381 join such authority to participate in future financings by the authority.

1382 (7) (a) By resolution of its governing body, a participant member may elect not to  
1383 participate in future financings of the authority. Such election shall be effective upon delivery  
1384 of a certified copy of the resolution to the authority.

1385 (b) In addition to the method outlined in Subsection (7)(a), a participant member may  
1386 be considered to have elected not to participate in future financings in any reasonable manner  
1387 selected by the authority.

1388 (8) For purposes of determining the presence of a quorum of the board of trustees or  
1389 for other purposes, the board of trustees of an authority may treat participant members which  
1390 have elected or are considered to have elected not to participate in a financing as not being  
1391 participant members.

(9) The composition organization of the authority shall change upon the entrance, election to participate, election not to participate, or withdrawal of a participant member.

Section 33. Section **11-32-15** is amended to read:

**11-32-15. Special fund -- Apportionment of excess amounts.**

(1) The provisions of Title 59, Revenue and Taxation, otherwise notwithstanding, delinquent taxes paid to the county on behalf of the participant members shall be paid into the special fund created with respect to the bonds issued by any authority.

(2) Following the payment of all bonds issued with respect to any delinquent tax receivables and all other amounts due and owing under any assignment agreement, amounts remaining on deposit with the authority or in the special fund created with respect to the issuance of the bonds shall be apportioned and distributed as follows:

(a) Any amounts which represent the amount by which the delinquent taxes recovered exceed the amount originally paid by the authority at the time of transfer of the delinquent tax receivables to the authority shall be distributed to the respective participant members, including the county, in the proportion of their respective taxes.

(b) Any amounts remaining following the distribution directed in Subsection (2)(a) shall be paid to the county.

Section 34. Section **13-11-21** is amended to read:

**13-11-21. Settlement of class action -- Complaint in class action delivered to enforcing authority.**

(1) (a) A defendant in a class action may file a written offer of settlement. If it is not accepted within a reasonable time by a plaintiff class representative, the defendant may file an affidavit reciting the rejection. The court may determine that the offer has enough merit to present to the members of the class. If it so determines, it shall order a hearing to determine whether the offer should be approved. It shall give the best notice of the hearing that is practicable under the circumstances, including notice to each member who can be identified through reasonable effort. The notice shall specify the terms of the offer and a reasonable period within which members of the class who request it are entitled to be included in the class. The statute of limitations for those who are excluded pursuant to this Subsection (1) is tolled for the period the class action has been pending, plus an additional year.

(b) If a member who has previously lost an opportunity to be excluded from the class is

excluded at his request in response to notice of the offer of settlement during the period specified under Subsection (1)(a), he may not thereafter participate in a class action for damages respecting the same consumer transaction, unless the court later disapproves the offer of settlement or approves a settlement materially different from that proposed in the original offer of settlement. After the expiration of the period of limitations, a member of the class is not entitled to be excluded from it.

(c) If the court later approves the offer of settlement, including changes, if any, required by the court in the interest of a just settlement of the action, it shall enter judgment, which is binding on all persons who are then members of the class. If the court disapproves the offer or approves a settlement materially different from that proposed in the original offer, notice shall be given to a person who was excluded from the action at his request in response to notice of the offer under Subsection (1)(a), and he is entitled to rejoin the class and, in the case of the approval, participate in the settlement.

(2) On the commencement of a class action under Section 13-11-19, the class representative shall mail by certified mail with return receipt requested or personally serve a copy of the complaint on the enforcing authority. Within 30 days after the receipt of a copy of the complaint, but not thereafter, the enforcing authority may intervene in the class action.

Section 35. Section **13-28-2** is amended to read:

**13-28-2. Definitions.**

For the purpose of this part:

(1) "Division" means the Division of Consumer Protection in the Department of Commerce.

(2) "Prize" means a gift, award, or other item or service of value.

(3) (a) "Prize notice" means a notice given to an individual in this state that satisfies all of the following:

(i) is or contains a representation that the individual has been selected or may be eligible to receive a prize; and

(ii) conditions receipt of a prize on a payment or donation from the individual or requires or invites the individual to make a contact to learn how to receive the prize or to obtain other information related to the notice.

(b) "Prize notice" does not include:

(i) a notice given at the request of the individual; or

(ii) a notice informing the individual that he or she has been awarded a prize as a result of his actual prior entry in a game, drawing, sweepstakes, or other contest if the individual is awarded the prize stated in the notice.

(4) "Solicitor" means a person who represents to an individual that the individual has been selected or may be eligible to receive a prize.

(5) "Sponsor" means a person on whose behalf a solicitor gives a prize notice.

(6) "Verifiable retail value" of a prize means:

(a) a price at which the solicitor or sponsor can demonstrate that a substantial number of the prizes have been sold by a person other than the solicitor or sponsor in the trade area in which the prize notice is given; or

(b) if the solicitor or sponsor is unable to satisfy Subsection (6)(a), no more than 1.5 times the amount the solicitor or sponsor paid for the prize.

Section 36. Section **16-10a-705** is amended to read:

**16-10a-705. Notice of meeting.**

(1) A corporation shall give notice to shareholders of the date, time, and place of each annual and special shareholders' meeting no fewer than 10 nor more than 60 days before the meeting date. Unless this chapter or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting.

(2) Unless this chapter or the articles of incorporation require otherwise, notice of an annual meeting need not include a description of the purpose or purposes for which the meeting is called.

(3) Notice of a special meeting must include a description of the purpose or purposes for which the meeting is called.

(4) (a) Subject to Subsection (4)(b), unless the bylaws require otherwise, if an annual or special shareholders' meeting is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment.

(b) If the adjournment is for more than 30 days, or if after the adjournment a new record date for the adjourned meeting is or must be fixed under Section 16-10a-707, notice of the adjourned meeting must be given pursuant to the requirements of this section to

1485 shareholders of record who are entitled to vote at the meeting.

1486 (5) (a) Notwithstanding a requirement that notice be given under any provision of this  
1487 chapter, the articles of incorporation, or bylaws of any corporation, notice shall not be required  
1488 to be given to any shareholder to whom:

1489 (i) a notice of two consecutive annual meetings, and all notices of meetings or of the  
1490 taking of action by written consent without a meeting during the period between the two  
1491 consecutive annual meetings, have been mailed, addressed to the shareholder at the  
1492 shareholder's address as shown on the records of the corporation, and have been returned  
1493 undeliverable; or

1494 (ii) at least two payments, if sent by first class mail, of dividends or interest on  
1495 securities during a 12 month period, have been mailed, addressed to the shareholder at the  
1496 shareholder's address as shown on the records of the corporation, and have been returned  
1497 undeliverable.

1498 (b) Any action taken or meeting held without notice to a shareholder to whom notice is  
1499 excused under Subsection (5) has the same force and effect as if notice had been duly given. If  
1500 a shareholder to whom notice is excused under Subsection (5) delivers to the corporation a  
1501 written notice setting forth the shareholder's current address, or if another address for the  
1502 shareholder is otherwise made known to the corporation, the requirement that notice be given  
1503 to the shareholder is reinstated. In the event that the action taken by the corporation requires the  
1504 filing of a certificate under any provision of this chapter, the certificate need not state that  
1505 notice was not given to shareholders to whom notice was not required pursuant to this  
1506 Subsection (5).

1507 Section 37. Section **16-10a-906** is amended to read:

1508 **16-10a-906. Determination and authorization of indemnification of directors.**

1509 (1) A corporation may not indemnify a director under Section 16-10a-902 unless  
1510 authorized and a determination has been made in the specific case that indemnification of the  
1511 director is permissible in the circumstances because the director has met the applicable  
1512 standard of conduct set forth in Section 16-10a-902. A corporation may not advance expenses  
1513 to a director under Section 16-10a-904 unless authorized in the specific case after the written  
1514 affirmation and undertaking required by Subsections 16-10a-904(1)(a) and (b) are received and  
1515 the determination required by Subsection 16-10a-904(1)(c) has been made.

(2) The determinations required by Subsection (1) shall be made:

(a) by the board of directors by a majority vote of those present at a meeting at which a quorum is present, and only those directors not parties to the proceeding shall be counted in satisfying the quorum; or

(b) if a quorum cannot be obtained as contemplated in Subsection (2)(a), by a majority vote of a committee of the board of directors designated by the board of directors, which committee shall consist of two or more directors not parties to the proceeding, except that directors who are parties to the proceeding may participate in the designation of directors for the committee;

(c) by special legal counsel:

(i) selected by the board of directors or its committee in the manner prescribed in Subsection (2)(a) or (b); or

(ii) if a quorum of the board of directors cannot be obtained under Subsection (2)(a) and a committee cannot be designated under Subsection (2)(b), selected by a majority vote of the full board of directors, in which selection directors who are parties to the proceeding may participate; or

(d) by the shareholders, by a majority of the votes entitled to be cast by holders of qualified shares present in person or by proxy at a meeting.

(3) A majority of the votes entitled to be cast by the holders of all qualified shares constitutes a quorum for purposes of action that complies with this section. Shareholders' action that otherwise complies with this section is not affected by the presence of holders, or the voting, of shares that are not qualified shares.

(4) Unless authorization is required by the bylaws, authorization of indemnification and advance of expenses shall be made in the same manner as the determination that indemnification or advance of expenses is permissible. However, if the determination that indemnification or advance of expenses is permissible is made by special legal counsel, authorization of indemnification and advance of expenses shall be made by a body entitled under Subsection (2)(c) to select legal counsel.

Section 38. Section **16-10a-1325** is amended to read:

**16-10a-1325. Payment.**

(1) Except as provided in Section 16-10a-1327, upon the later of the effective date of

the corporate action creating dissenters' rights under Section 16-10a-1302, and receipt by the corporation of each payment demand pursuant to Section 16-10a-1323, the corporation shall pay the amount the corporation estimates to be the fair value of the dissenter's shares, plus interest to each dissenter who has complied with Section 16-10a-1323, and who meets the requirements of Section 16-10a-1321, and who has not yet received payment.

(2) Each payment made pursuant to Subsection (1) must be accompanied by:

(a) (i) (A) the corporation's balance sheet as of the end of its most recent fiscal year, or if not available, a fiscal year ending not more than 16 months before the date of payment;

(B) an income statement for that year;

(C) a statement of changes in shareholders' equity for that year and a statement of cash flow for that year, if the corporation customarily provides such statements to shareholders; and

(D) the latest available interim financial statements, if any;

(ii) the balance sheet and statements referred to in Subsection (2)(a)(i) must be audited if the corporation customarily provides audited financial statements to shareholders;

(b) a statement of the corporation's estimate of the fair value of the shares and the amount of interest payable with respect to the shares;

(c) a statement of the dissenter's right to demand payment under Section 16-10a-1328; and

(d) a copy of this part.

Section 39. Section **17-36-5** is amended to read:

**17-36-5. Creation of Citizens and County Officials Advisory Committee.**

(1) For the purpose of this act there is created a Citizens and County Officials Advisory Committee appointed by the state auditor composed of the following persons:

(a) five county auditors elected to that specific and exclusive position;

(b) five county treasurers elected to that specific and exclusive position;

(c) two citizens with expertise in the area of local government and the needs and problems of such government;

(d) four additional elected county officers, one of whom shall be from the five largest counties in the state and one of whom shall be from the five smallest counties in the state; and

(e) such other members as the auditor considers appropriate.

(2) (a) Except as required by Subsection (2)(b), the terms of committee members shall

1578 be four years each.

1579 (b) Notwithstanding the requirements of Subsection (2)(a), the state auditor shall, at the  
1580 time of appointment or reappointment, adjust the length of terms to ensure that the terms of  
1581 committee members are staggered so that approximately half of the committee is appointed  
1582 every two years.

1583 (3) When a vacancy occurs in the membership for any reason, the replacement shall be  
1584 appointed for the unexpired term.

1585 (4) (a) (i) Members who are not government employees shall receive no compensation  
1586 or benefits for their services, but may receive per diem and expenses incurred in the  
1587 performance of the member's official duties at the rates established by the Division of Finance  
1588 under Sections 63A-3-106 and 63A-3-107.

1589 (ii) Members may decline to receive per diem and expenses for their service.

1590 (b) (i) State government officer and employee members who do not receive salary, per  
1591 diem, or expenses from their agency for their service may receive per diem and expenses  
1592 incurred in the performance of their official duties from the committee at the rates established  
1593 by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

1594 (ii) State government officer and employee members may decline to receive per diem  
1595 and expenses for their service.

1596 (c) (i) Local government members who do not receive salary, per diem, or expenses  
1597 from the entity that they represent for their service may receive per diem and expenses incurred  
1598 in the performance of their official duties at the rates established by the Division of Finance  
1599 under Sections 63A-3-106 and 63A-3-107.

1600 (ii) Local government members may decline to receive per diem and expenses for their  
1601 service.

1602 (5) The advisory committee shall assist, advise, and make recommendations to the  
1603 state auditor in the preparation of a uniform system of county budgeting, accounting, and  
1604 reporting.

1605 Section 40. Section **19-2-109.2** is amended to read:

1606 **19-2-109.2. Small business assistance program.**

1607 (1) The board shall establish a small business stationary source technical and  
1608 environmental compliance assistance program that conforms with Title V of the 1990 Clean

1609 Air Act to assist small businesses to comply with state and federal air pollution laws.

1610 (2) There is created the Compliance Advisory Panel to advise and monitor the program  
1611 created in Subsection (1). The seven panel members are:

1612 (a) two members who are not owners or representatives of owners of small business  
1613 stationary air pollution sources, selected by the governor to represent the general public;

1614 (b) four members who are owners or who represent owners of small business stationary  
1615 sources selected by leadership of the Utah Legislature as follows:

1616 (i) one member selected by the majority leader of the Senate;

1617 (ii) one member selected by the minority leader of the Senate;

1618 (iii) one member selected by the majority leader of the House of Representatives; and

1619 (iv) one member selected by the minority leader of the House of Representatives; and

1620 (c) one member selected by the executive director to represent the Division of Air  
1621 Quality, Department of Environmental Quality.

1622 (3) (a) Except as required by Subsection (3)(b), as terms of current panel members  
1623 expire, the department shall appoint each new member or reappointed member to a four-year  
1624 term.

1625 (b) Notwithstanding the requirements of Subsection (3)(a), the department shall, at the  
1626 time of appointment or reappointment, adjust the length of terms to ensure that the terms of  
1627 panel members are staggered so that approximately half of the panel is appointed every two  
1628 years.

1629 (4) Members may serve more than one term.

1630 (5) Members shall hold office until the expiration of their terms and until their  
1631 successors are appointed, but not more than 90 days after the expiration of their terms.

1632 (6) When a vacancy occurs in the membership for any reason, the replacement shall be  
1633 appointed for the unexpired term.

1634 (7) Every two years, the panel shall elect a chair from its members.

1635 (8) (a) The panel shall meet as necessary to carry out its duties. Meetings may be called  
1636 by the chair, the executive secretary, or upon written request of three of the members of the  
1637 panel.

1638 (b) Three days' notice shall be given to each member of the panel prior to a meeting.

1639 (9) Four members constitute a quorum at any meeting, and the action of the majority of

members present is the action of the panel.

(10) (a) (i) Members who are not government employees shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) Members may decline to receive per diem and expenses for their service.

(b) (i) State government officer and employee members who do not receive salary, per diem, or expenses from their agency for their service may receive per diem and expenses incurred in the performance of their official duties from the panel at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) State government officer and employee members may decline to receive per diem and expenses for their service.

(c) Legislators on the committee shall receive compensation and expenses as provided by law and legislative rule.

Section 41. Section **19-2-113** is amended to read:

**19-2-113. Variances -- Judicial review.**

(1) (a) Any person who owns or is in control of any plant, building, structure, establishment, process, or equipment may apply to the board for a variance from its rules.

(b) The board may grant the requested variance following an announced public meeting, if it finds, after considering the endangerment to human health and safety and other relevant factors, that compliance with the rules from which variance is sought would produce serious hardship without equal or greater benefits to the public.

(2) A variance may not be granted under this section until the board has considered the relative interests of the applicant, other owners of property likely to be affected by the discharges, and the general public.

(3) Any variance or renewal of a variance shall be granted within the requirements of Subsection (1) and for time periods and under conditions consistent with the reasons for it, and within the following limitations:

(a) if the variance is granted on the grounds that there are no practicable means known or available for the adequate prevention, abatement, or control of the air pollution involved, it shall be only until the necessary means for prevention, abatement, or control become known

1671 and available, and subject to the taking of any substitute or alternate measures that the board  
1672 may prescribe;

1673 (b) (i) if the variance is granted on the grounds that compliance with the requirements  
1674 from which variance is sought will require that measures, because of their extent or cost, must  
1675 be spread over a long period of time, the variance shall be granted for a reasonable time that, in  
1676 the view of the board, is required for implementation of the necessary measures; and

1677 (ii) a variance granted on this ground shall contain a timetable for the implementation  
1678 of remedial measures in an expeditious manner and shall be conditioned on adherence to the  
1679 timetable; or

1680 (c) if the variance is granted on the ground that it is necessary to relieve or prevent  
1681 hardship of a kind other than that provided for in Subsection (3)(a) or (b), it shall not be  
1682 granted for more than one year.

1683 (4) (a) Any variance granted under this section may be renewed on terms and  
1684 conditions and for periods that would be appropriate for initially granting a variance.

1685 (b) If a complaint is made to the board because of the variance, a renewal may not be  
1686 granted unless, following an announced public meeting, the board finds that renewal is  
1687 justified.

1688 (c) To receive a renewal, an applicant shall submit a request for agency action to the  
1689 board requesting a renewal.

1690 (d) Immediately upon receipt of an application for renewal, the board shall give public  
1691 notice of the application as required by its rules.

1692 (5) (a) A variance or renewal is not a right of the applicant or holder but may be  
1693 granted at the board's discretion.

1694 (b) A person aggrieved by the board's decision may obtain judicial review.

1695 (c) Venue for judicial review of informal adjudicative proceedings is in the district  
1696 court in which the air contaminant source is situated.

1697 (6) (a) The board may review any variance during the term for which it was granted.

1698 (b) The review procedure is the same as that for an original application.

1699 (c) The variance may be revoked upon a finding that:

1700 (i) the nature or amount of emission has changed or increased; or

1701 (ii) if facts existing at the date of the review had existed at the time of the original

application, the variance would not have been granted.

(7) Nothing in this section and no variance or renewal granted pursuant to it shall be construed to prevent or limit the application of the emergency provisions and procedures of Section 19-2-112 to any person or property.

Section 42. Section **19-5-115** is amended to read:

**19-5-115. Violations -- Penalties -- Civil actions by board -- Ordinances and rules of political subdivisions.**

(1) The terms "knowingly," "willfully," and "criminal negligence" shall mean as defined in Section 76-2-103.

(2) Any person who violates this chapter, or any permit, rule, or order adopted under it, upon a showing that the violation occurred, is subject in a civil proceeding to a civil penalty not to exceed \$10,000 per day of violation.

(3) (a) A person is guilty of a class A misdemeanor and is subject to imprisonment under Section 76-3-204 and a fine not exceeding \$25,000 per day who with criminal negligence:

(i) discharges pollutants in violation of Subsection 19-5-107(1) or in violation of any condition or limitation included in a permit issued under Subsection 19-5-107(3);

(ii) violates Section 19-5-113;

(iii) violates a pretreatment standard or toxic effluent standard for publicly owned treatment works; or

(iv) manages sewage sludge in violation of this chapter or rules adopted under it.

(b) A person is guilty of a third degree felony and is subject to imprisonment under Section 76-3-203 and a fine not to exceed \$50,000 per day of violation who knowingly:

(i) discharges pollutants in violation of Subsection 19-5-107(1) or in violation of any condition or limitation included in a permit issued under Subsection 19-5-107(3);

(ii) violates Section 19-5-113;

(iii) violates a pretreatment standard or toxic effluent standard for publicly-owned treatment works; or

(iv) manages sewage sludge in violation of this chapter or rules adopted under it.

(4) A person is guilty of a third degree felony and subject to imprisonment under Section 76-3-203 and shall be punished by a fine not exceeding \$10,000 per day of violation if

that person knowingly:

(a) makes a false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter, or by any permit, rule, or order issued under it; or

(b) falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter.

(5) (a) As used in this section:

(i) "Organization" means a legal entity, other than a government, established or organized for any purpose, and includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons.

(ii) "Serious bodily injury" means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(b) A person is guilty of a second degree felony and, upon conviction, is subject to imprisonment under Section 76-3-203 and a fine of not more than \$250,000 if that person:

(i) knowingly violates this chapter, or any permit, rule, or order adopted under it; and

(ii) knows at that time that he is placing another person in imminent danger of death or serious bodily injury.

(c) If a person is an organization, it shall, upon conviction of violating Subsection (5)(a), be subject to a fine of not more than \$1,000,000.

(d) (i) A defendant who is an individual is considered to have acted knowingly if:

(A) the defendant's conduct placed another person in imminent danger of death or serious bodily injury; and

(B) the defendant was aware of or believed that there was an imminent danger of death or serious bodily injury to another person.

(ii) Knowledge possessed by a person other than the defendant may not be attributed to the defendant.

(iii) Circumstantial evidence may be used to prove that the defendant possessed actual knowledge, including evidence that the defendant took affirmative steps to be shielded from receiving relevant information.

(e) (i) It is an affirmative defense to prosecution under Subsection (5) that the conduct charged was consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of:

(A) an occupation, a business, or a profession; or

(B) medical treatment or medical or scientific experimentation conducted by professionally approved methods and the other person was aware of the risks involved prior to giving consent.

(ii) The defendant has the burden of proof to establish any affirmative defense under this Subsection (5)(e) and must prove that defense by a preponderance of the evidence.

(6) For purposes of Subsections 19-5-115(3) through (5), a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

(7) (a) The board may begin a civil action for appropriate relief, including a permanent or temporary injunction, for any violation or threatened violation for which it is authorized to issue a compliance order under Section 19-5-111.

(b) Actions shall be brought in the district court where the violation or threatened violation occurs.

(8) (a) The attorney general is the legal advisor for the board and its executive secretary and shall defend them in all actions or proceedings brought against them.

(b) The county attorney or district attorney as appropriate under Sections 17-18-1, 17-18-1.5, and 17-18-1.7 in the county in which a cause of action arises, shall bring any action, civil or criminal, requested by the board, to abate a condition that exists in violation of, or to prosecute for the violation of, or to enforce, the laws or the standards, orders, and rules of the board or the executive secretary issued under this chapter.

(c) The board may itself initiate any action under this section and be represented by the attorney general.

(9) If any person fails to comply with a cease and desist order that is not subject to a stay pending administrative or judicial review, the board may, through its executive secretary, initiate an action for and be entitled to injunctive relief to prevent any further or continued violation of the order.

(10) Any political subdivision of the state may enact and enforce ordinances or rules

for the implementation of this chapter that are not inconsistent with this chapter.

(11) (a) Except as provided in Subsection (11)(b), all penalties assessed and collected under the authority of this section shall be deposited in the General Fund.

(b) The department may reimburse itself and local governments from monies collected from civil penalties for extraordinary expenses incurred in environmental enforcement activities.

(c) The department shall regulate reimbursements by making rules that:

(i) define qualifying environmental enforcement activities; and

(ii) define qualifying extraordinary expenses.

Section 43. Section **19-6-108.5** is amended to read:

**19-6-108.5. Management of hazardous waste generated outside Utah.**

(1) On and after July 1, 1992, any waste entering Utah for disposal or treatment, excluding incineration, that is classified by Utah as nonhazardous solid waste and by the state of origin as hazardous waste, and that exceeds the base volume provided in Subsection (2) for each receiving facility or site, shall be treated according to the same treatment standards to which it would have been subject had it remained in the state where it originated. However, if those standards are less protective of human health or the environment than the treatment standards applicable under Utah law, the waste shall be treated in compliance with the Utah standards.

(2) The base volume provided in Subsection (1) for each receiving facility or site is the average of the annual quantities of nonhazardous solid waste that originated outside Utah and were received by the facility or site in calendar years 1990 and 1991.

(3) (a) The base volume for each receiving facility or site that has an operating plan approved prior to July 1, 1992, but did not receive nonhazardous solid waste originating outside Utah during calendar years 1990 and 1991, shall be the average of annual quantities of out-of-state nonhazardous waste the facility or site received during the 24 months following the date of initial receipt of nonhazardous waste originating outside Utah.

(b) The base determined under Subsection (3)(a) applies to the facility or site on and after July 1, 1995, regardless of the amount of nonhazardous waste originating outside Utah received by the facility or site prior to this date.

Section 44. Section **19-6-316** is amended to read:

**19-6-316. Liability for costs of remedial investigations -- Liability agreements.**

(1) The executive director may recover only a proportionate share of costs of any remedial investigation performed under Sections 19-6-314 and 19-6-315 from each responsible party, as provided in this section.

(2) (a) In apportioning responsibility for the remedial investigation, or liability for the costs of the remedial investigation, in any administrative proceeding or judicial action, the following standards apply:

(i) liability shall be apportioned in proportion to each responsible party's respective contribution to the release;

(ii) the apportionment of liability shall be based on equitable factors, including the quantity, mobility, persistence, and toxicity of hazardous substances contributed by a responsible party, and the comparative behavior of a responsible party in contributing to the release, relative to other responsible parties.

(b) Liability may not be apportioned against a current or previous owner or operator who acquired or became the operator of the facility before March 18, 1985, who may otherwise be a responsible party but who did not know that any hazardous material which is the subject of a release was on, in, or at the facility prior to acquisition or operation of the facility, and the release is not the result of an act or omission of the current or previous owner or operator.

(c) Liability may not be apportioned against a current or previous owner or operator who acquired or became the operator of the facility on or after March 18, 1985, who may otherwise be a responsible party but who did not know and had no reason to know, after having taken all appropriate inquiry into the previous ownership and uses of the facility, consistent with good commercial or customary practice at the time of the purchase, that any hazardous material which is the subject of a release was on, in, or at the facility prior to acquisition or operation of the facility, and the release is not the result of an act or omission of the current or previous owner or operator.

(d) A responsible party who is not exempt under Subsection (2)(b) or (c) may be considered to have contributed to the release and may be liable for a proportionate share of costs as provided under this section either by affirmatively causing a release or by failing to take action to prevent or abate a release which has originated at or from the facility. A person whose property is contaminated by migration from an offsite release is not considered to have

contributed to the release unless the person takes actions which exacerbate the release.

(e) A responsible party who meets the criteria in Subsection (2)(b) or (c) or a person who is not considered to have contributed to a release under Subsection (2)(d) is not considered to have contributed to a release solely by failing to take abatement or remedial action pursuant to an administrative order.

(f) (i) The burden of proving proportionate contribution shall be borne by each responsible party.

(ii) If a responsible party does not prove his proportionate contribution, the court or the executive director shall apportion liability to the party based solely on available evidence and the standards of Subsection (2)(a).

(iii) The ability of a responsible party to pay is not a factor in the apportionment of liability.

(g) The court may not impose joint and several liability.

(h) Each responsible party is strictly liable solely for his proportionate share of investigation costs.

(3) The failure of the executive director to name all responsible parties is not a defense to an action under this section.

(4) (a) Any party who incurs costs under this part in excess of his liability may seek contribution from any other party who is or may be liable under this part for the excess costs in district court.

(b) In resolving claims made under Subsection (4)(a), the court shall allocate costs using the standards set forth in Subsection (2).

(5) (a) A party who has resolved his liability in an agreement under Sections 19-6-314 through this section is not liable for claims for contribution regarding matters addressed in the settlement.

(b) (i) An agreement does not discharge any of the liability of responsible parties who are not parties to the agreement, unless the terms of the agreement provide otherwise.

(ii) An agreement made under this Subsection (5)(b) reduces the potential liability of other responsible parties by the amount of the agreement.

(6) (a) If the executive director obtains less than complete relief from a party who has resolved his liability in an agreement under Sections 19-6-314 through this section, the

executive director may bring an action against any party who has not resolved his liability in an agreement.

(b) In apportioning liability, the standards of Subsection (2) apply.

(c) A party who resolved his liability for some or all of the costs in an agreement under Sections 19-6-314 through this section may seek contribution from any person who is not party to an agreement under Sections 19-6-314 through this section.

(7) (a) An agreement made under Sections 19-6-314 through this section may provide that the executive director will pay for costs of actions that the parties have agreed to perform, but which the executive director has agreed to finance, under the agreement.

(b) If the executive director makes payments from the fund, he may recover the amount paid using the authority of Sections 19-6-314 through this section or any other applicable authority.

Section 45. Section **19-6-318** is amended to read:

**19-6-318. Remedial action liability -- Liability agreements.**

(1) (a) In apportioning responsibility for the remedial action in any administrative proceeding or judicial action under Sections 19-6-317 and 19-6-319, the following standards apply:

(i) liability shall be apportioned in proportion to each responsible party's respective contribution to the release;

(ii) the apportionment of liability shall be based on equitable factors, including the quantity, mobility, persistence, and toxicity of hazardous substances contributed by a responsible party, and the comparative behavior of a responsible party in contributing to the release, relative to other responsible parties.

(b) Liability may not be apportioned against a current or previous owner or operator who acquired or became the operator of the facility before March 18, 1985, who may otherwise be a responsible party but who did not know that any hazardous material which is the subject of a release was on, in, or at the facility prior to acquisition or operation of the facility, and the release is not the result of an act or omission of the current or previous owner or operator.

(c) Liability may not be apportioned against a current or previous owner or operator who acquired or became the operator of the facility on or after March 18, 1985, who may otherwise be a responsible party but who did not know and had no reason to know, after having

1919 taken all appropriate inquiry into the previous ownership and uses of the facility, consistent  
1920 with good commercial or customary practice at the time of the purchase, that any hazardous  
1921 material which is the subject of a release was on, in, or at the facility prior to acquisition or  
1922 operation of the facility, and the release is not the result of an act or omission of the current or  
1923 previous owner or operator.

1924 (d) A responsible party who is not exempt under Subsection (1)(b) or (c) may be  
1925 considered to have contributed to the release and may be liable for a proportionate share of  
1926 costs as provided under this section either by affirmatively causing a release or by failing to  
1927 take action to prevent or abate a release which has originated at or from the facility. A person  
1928 whose property is contaminated by migration from an offsite release is not considered to have  
1929 contributed to the release unless the person takes actions which exacerbate the release.

1930 (e) A responsible party who meets the criteria in Subsection (1)(b) or (c) or a person  
1931 who is not considered to have contributed to a release under Subsection (1)(d) is not considered  
1932 to have contributed to a release solely by failing to take abatement or remedial action pursuant  
1933 to an administrative order.

1934 (f) (i) The burden of proving proportionate contribution shall be borne by each  
1935 responsible party.

1936 (ii) If a responsible party does not prove his proportionate contribution, the court or the  
1937 director shall apportion liability to the party solely based on available evidence and the  
1938 standards of Subsection (1)(a).

1939 (iii) The ability of a responsible party to pay is not a factor in the apportionment of  
1940 liability.

1941 (g) The court may not impose joint and several liability.

1942 (h) Each responsible party is strictly liable solely for his proportionate share of  
1943 remedial action costs.

1944 (2) The failure of the executive director to name all responsible parties is not a defense  
1945 to an action under this section.

1946 (3) (a) Any party who incurs costs under Sections 19-6-317 through 19-6-320 in excess  
1947 of his liability may seek contribution from any other party who is or may be liable under  
1948 Sections 19-6-317 through 19-6-320 for the excess costs in district court.

1949 (b) In resolving claims made under Subsection (3)(a), the court shall allocate costs

using the standards set forth in Subsection (1).

(4) (a) A party who has resolved his liability in an agreement under Sections 19-6-317 through 19-6-320 is not liable for claims for contribution regarding matters addressed in the settlement.

(b) (i) An agreement does not discharge any of the liability of responsible parties who are not parties to the agreement, unless the terms of the agreement provide otherwise.

(ii) An agreement made under this Subsection (4)(b) reduces the potential liability of other responsible parties by the amount of the agreement.

(5) (a) If the executive director obtains less than complete relief from a party who has resolved his liability in an agreement under Sections 19-6-317 through 19-6-320, the executive director may bring an action against any party who has not resolved his liability in an agreement.

(b) In apportioning liability, the standards of Subsection (1) apply.

(c) A party who resolved his liability for some or all of the costs in an agreement under Sections 19-6-317 through 19-6-320 may seek contribution from any person who is not party to an agreement under Sections 19-6-317 through 19-6-320.

(6) (a) An agreement made under Sections 19-6-317 through 19-6-320 may provide that the executive director will pay for costs of actions that the parties have agreed to perform, but which the executive director has agreed to finance, under the agreement.

(b) If the executive director makes payments, he may recover the amount using the authority of Sections 19-6-317 through 19-6-320 or any other applicable authority.

Section 46. Section **19-6-325** is amended to read:

**19-6-325. Voluntary agreements -- Parties -- Funds -- Enforcement.**

(1) (a) Under this part, and subject to Subsection (1)(b), the executive director may enter into a voluntary agreement with a responsible party providing for the responsible party to conduct an investigation or a cleanup action on sites that contain hazardous materials.

(b) The executive director and a responsible party may not enter into a voluntary agreement under this part unless all known potentially responsible parties:

(i) have been notified by either the executive director or the responsible party of the proposed agreement; and

(ii) have been given an opportunity to comment on the proposed agreement prior to the

parties' entering into the agreement.

(2) (a) The executive director may receive funds from any responsible party that signs a voluntary agreement allowing the executive director to:

(i) review any proposals outlining how the investigation or cleanup action is to be performed; and

(ii) oversee the investigation or cleanup action.

(b) Funds received by the executive director under this section shall be deposited in the fund and used by the executive director as provided in the voluntary agreement.

(3) If a responsible party fails to perform as required under a voluntary agreement entered into under this part, the executive director may take action and seek penalties to enforce the agreement as provided in the agreement.

(4) The executive director may not use the provisions of Section 19-6-310, 19-6-316, or 19-6-318 to recover costs received or expended pursuant to a voluntary agreement from any person not a party to that agreement.

(5) (a) Any party who incurs costs under a voluntary agreement in excess of his liability may seek contribution from any other party who is or may be liable under this part for the excess costs in district court.

(b) In resolving claims made under Subsection (5)(a), the court shall allocate costs using the standards in Subsection 19-6-310(2).

(6) This section takes precedence over conflicting provisions in this chapter regarding agreements with responsible parties to conduct an investigation or cleanup action.

Section 47. Section **19-6-402** is amended to read:

**19-6-402. Definitions.**

As used in this part:

(1) "Abatement action" means action taken to limit, reduce, mitigate, or eliminate a release from an underground storage tank or petroleum storage tank, or to limit or reduce, mitigate, or eliminate the damage caused by that release.

(2) "Board" means the Solid and Hazardous Waste Control Board created in Section 19-1-106.

(3) "Bodily injury" means bodily harm, sickness, disease, or death sustained by any person.

2012 (4) "Certificate of compliance" means a certificate issued to a facility by the executive  
2013 secretary:

2014 (a) demonstrating that an owner or operator of a facility containing one or more  
2015 petroleum storage tanks has met the requirements of this part; and

2016 (b) listing all tanks at the facility, specifying which tanks may receive petroleum and  
2017 which tanks have not met the requirements for compliance.

2018 (5) "Certificate of registration" means a certificate issued to a facility by the executive  
2019 secretary demonstrating that an owner or operator of a facility containing one or more  
2020 underground storage tanks has:

2021 (a) registered the tanks; and

2022 (b) paid the annual underground storage tank fee.

2023 (6) (a) "Certified underground storage tank consultant" means any person who:

2024 (i) meets the education and experience standards established by the board under  
2025 Subsection 19-6-403(1)(a)(vi) in order to provide or contract to provide information, opinions,  
2026 or advice relating to underground storage tank management, release abatement, investigation,  
2027 corrective action, or evaluation for a fee, or in connection with the services for which a fee is  
2028 charged; and

2029 (ii) has submitted an application to the board and received a written statement of  
2030 certification from the board.

2031 (b) "Certified underground storage tank consultant" does not include:

2032 (i) an employee of the owner or operator of the underground storage tank, or an  
2033 employee of a business operation that has a business relationship with the owner or operator of  
2034 the underground storage tank, and that markets petroleum products or manages underground  
2035 storage tanks; or

2036 (ii) persons licensed to practice law in this state who offer only legal advice on  
2037 underground storage tank management, release abatement, investigation, corrective action, or  
2038 evaluation.

2039 (7) "Closed" means an underground storage tank no longer in use that has been:

2040 (a) emptied and cleaned to remove all liquids and accumulated sludges; and

2041 (b) either removed from the ground or filled with an inert solid material.

2042 (8) "Corrective action plan" means a plan for correcting a release from a petroleum

2043 storage tank that includes provisions for all or any of the following:

2044 (a) cleanup or removal of the release;

2045 (b) containment or isolation of the release;

2046 (c) treatment of the release;

2047 (d) correction of the cause of the release;

2048 (e) monitoring and maintenance of the site of the release;

2049 (f) provision of alternative water supplies to persons whose drinking water has become

2050 contaminated by the release; or

2051 (g) temporary or permanent relocation, whichever is determined by the executive

2052 secretary to be more cost-effective, of persons whose dwellings have been determined by the

2053 executive secretary to be no longer habitable due to the release.

2054 (9) "Costs" means any monies expended for:

2055 (a) investigation;

2056 (b) abatement action;

2057 (c) corrective action;

2058 (d) judgments, awards, and settlements for bodily injury or property damage to third

2059 parties;

2060 (e) legal and claims adjusting costs incurred by the state in connection with judgments,

2061 awards, or settlements for bodily injury or property damage to third parties; or

2062 (f) costs incurred by the state risk manager in determining the actuarial soundness of

2063 the fund.

2064 (10) "Covered by the fund" means the requirements of Section 19-6-424 have been

2065 met.

2066 (11) "Dwelling" means a building that is usually occupied by a person lodging there at

2067 night.

2068 (12) "Enforcement proceedings" means a civil action or the procedures to enforce

2069 orders established by Section 19-6-425.

2070 (13) "Executive secretary" means the executive secretary of the board.

2071 (14) "Facility" means all underground storage tanks located on a single parcel of

2072 property or on any property adjacent or contiguous to that parcel.

2073 (15) "Fund" means the Petroleum Storage Tank Trust Fund created in Section

2074 19-6-409.

2075 (16) "Loan fund" means the Petroleum Storage Tank Loan Fund created in Section  
2076 19-6-405.3.

2077 (17) "Operator" means any person in control of or who is responsible on a daily basis  
2078 for the maintenance of an underground storage tank that is in use for the storage, use, or  
2079 dispensing of a regulated substance.

2080 (18) "Owner" means:

2081 (a) in the case of an underground storage tank in use on or after November 8, 1984, any  
2082 person who owns an underground storage tank used for the storage, use, or dispensing of a  
2083 regulated substance; and

2084 (b) in the case of any underground storage tank in use before November 8, 1984, but  
2085 not in use on or after November 8, 1984, any person who owned the tank immediately before  
2086 the discontinuance of its use for the storage, use, or dispensing of a regulated substance.

2087 (19) "Petroleum" includes crude oil or any fraction of crude oil that is liquid at 60  
2088 degrees Fahrenheit and at a pressure of 14.7 pounds per square inch absolute.

2089 (20) "Petroleum storage tank" means a tank that:

2090 (a) (i) is underground;

2091 (ii) is regulated under Subtitle I of the Resource Conservation and Recovery Act, 42  
2092 U.S.C. Section 6991c, et seq.; and

2093 (iii) contains petroleum; or

2094 (b) is a tank that the owner or operator voluntarily submits for participation in the  
2095 Petroleum Storage Tank Trust Fund under Section 19-6-415.

2096 (21) "Petroleum Storage Tank Restricted Account" means the account created in  
2097 Section 19-6-405.5.

2098 (22) "Program" means the Environmental Assurance Program under Section  
2099 19-6-410.5.

2100 (23) "Property damage" means physical injury to or destruction of tangible property  
2101 including loss of use of that property.

2102 (24) "Regulated substance" means petroleum and petroleum-based substances  
2103 comprised of a complex blend of hydrocarbons derived from crude oil through processes of  
2104 separation, conversion, upgrading, and finishing, and includes motor fuels, jet fuels, distillate

2105 fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

2106 (25) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching,  
2107 or disposing from an underground storage tank or petroleum storage tank. The entire release is  
2108 considered a single release.

2109 (26) (a) "Responsible party" means any person who:

2110 (i) is the owner or operator of a facility;

2111 (ii) owns or has legal or equitable title in a facility or an underground storage tank;

2112 (iii) owned or had legal or equitable title in the facility at the time any petroleum was  
2113 received or contained at the facility;

2114 (iv) operated or otherwise controlled activities at the facility at the time any petroleum  
2115 was received or contained at the facility; or

2116 (v) is an underground storage tank installation company.

2117 (b) "Responsible party" as defined in Subsections (26)(a)(i), (ii), and (iii) does not  
2118 include:

2119 (i) any person who is not an operator and, without participating in the management of a  
2120 facility and otherwise not engaged in petroleum production, refining, and marketing, holds  
2121 indicia of ownership:

2122 (A) primarily to protect his security interest in the facility; or

2123 (B) as a fiduciary or custodian under Title 75, Utah Uniform Probate Code, or under an  
2124 employee benefit plan; or

2125 (ii) governmental ownership or control of property by involuntary transfers as provided  
2126 in CERCLA Section 101(20)(D), 42 U.S.C. Sec. 9601(20)(D).

2127 (c) The exemption created by Subsection (26)(b)(i)(B) does not apply to actions taken  
2128 by the state or its officials or agencies under this part.

2129 (d) The terms and activities "indicia of ownership," "primarily to protect a security  
2130 interest," "participation in management," and "security interest" under this part are in  
2131 accordance with 40 CFR Part 280, Subpart I, as amended, and 42 U.S.C. Sec. 6991b(h)(9).

2132 (e) The terms "participate in management" and "indicia of ownership" as defined in 40  
2133 CFR Part 280, Subpart I, as amended, and 42 U.S.C. Sec. 6991b(h)(9) include and apply to the  
2134 fiduciaries listed in Subsection (26)(b)(i)(B).

2135 (27) "Soil test" means a test, established or approved by board rule, to detect the

2136 presence of petroleum in soil.

2137 (28) "State cleanup appropriation" means the money appropriated by the Legislature to  
2138 the department to fund the investigation, abatement, and corrective action regarding releases  
2139 not covered by the fund.

2140 (29) "Underground storage tank" means any tank regulated under Subtitle I, Resource  
2141 Conservation and Recovery Act, 42 U.S.C. Sec. 6991c, et seq., including:

2142 (a) a petroleum storage tank;

2143 (b) underground pipes and lines connected to a storage tank; and

2144 (c) any underground ancillary equipment and containment system.

2145 (30) "Underground storage tank installation company" means any person, firm,  
2146 partnership, corporation, governmental entity, association, or other organization who installs  
2147 underground storage tanks.

2148 (31) "Underground storage tank installation company permit" means a permit issued to  
2149 an underground storage tank installation company by the executive secretary.

2150 (32) "Underground storage tank technician" means a person employed by and acting  
2151 under the direct supervision of a certified underground storage tank consultant to assist in  
2152 carrying out the functions described in Subsection (6)(a).

2153 Section 48. Section **19-6-703** is amended to read:

2154 **19-6-703. Definitions.**

2155 (1) "Board" means the Solid and Hazardous Waste Control Board created in Section  
2156 19-1-106.

2157 (2) "Commission" means the State Tax Commission.

2158 (3) "Department" means the Department of Environmental Quality created in Title 19,  
2159 Chapter 1, General Provisions.

2160 (4) "Division" means the Division of Solid and Hazardous Waste as created in Section  
2161 19-1-105.

2162 (5) "DIY" means do it yourself.

2163 (6) "DIYer" means a person who generates used oil through household activities,  
2164 including maintenance of personal vehicles.

2165 (7) "DIYer used oil" means used oil a person generates through household activities,  
2166 including maintenance of personal vehicles.

- 2167 (8) "DIYer used oil collection center" means any site or facility that accepts or  
2168 aggregates and stores used oil collected only from DIYers.
- 2169 (9) "Executive secretary" means the executive secretary of the board.
- 2170 (10) "Hazardous waste" means any substance defined as hazardous waste under Title  
2171 19, Chapter 6, Hazardous Substances.
- 2172 (11) "Lubricating oil" means the fraction of crude oil or synthetic oil used to reduce  
2173 friction in an industrial or mechanical device. Lubricating oil includes rerefined oil.
- 2174 (12) "Lubricating oil vendor" means the person making the first sale of a lubricating oil  
2175 in Utah.
- 2176 (13) "Manifest" means the form used for identifying the quantity and composition and  
2177 the origin, routing, and destination of used oil during its transportation from the point of  
2178 collection to the point of storage, processing, use, or disposal.
- 2179 (14) "Off-specification used oil" means used oil that exceeds levels of constituents and  
2180 properties as specified by board rule and consistent with 40 CFR 279, Standards for the  
2181 Management of Used Oil.
- 2182 (15) "On-specification used oil" means used oil that does not exceed levels of  
2183 constituents and properties as specified by board rule and consistent with 40 CFR 279,  
2184 Standards for the Management of Used Oil.
- 2185 (16) (a) "Processing" means chemical or physical operations under Subsection (16)(b)  
2186 designed to produce from used oil, or to make used oil more amenable for production of:
- 2187 (i) gasoline, diesel, and other petroleum derived fuels;  
2188 (ii) lubricants; or  
2189 (iii) other products derived from used oil.
- 2190 (b) "Processing" includes:
- 2191 (i) blending used oil with virgin petroleum products;  
2192 (ii) blending used oils to meet fuel specifications;  
2193 (iii) filtration;  
2194 (iv) simple distillation;  
2195 (v) chemical or physical separation; and  
2196 (vi) rerefining.
- 2197 (17) "Recycled oil" means oil reused for any purpose following its original use,

2198 including:

2199 (a) the purpose for which the oil was originally used; and

2200 (b) used oil processed or burned for energy recovery.

2201 (18) "Rerefining distillation bottoms" means the heavy fraction produced by vacuum  
2202 distillation of filtered and dehydrated used oil. The composition varies with column operation  
2203 and feedstock.

2204 (19) "Used oil" means any oil, refined from crude oil or a synthetic oil, that has been  
2205 used and as a result of that use is contaminated by physical or chemical impurities.

2206 (20) (a) "Used oil aggregation point" means any site or facility that accepts, aggregates,  
2207 or stores used oil collected only from other used oil generation sites owned or operated by the  
2208 owner or operator of the aggregation point, from which used oil is transported to the  
2209 aggregation point in shipments of no more than 55 gallons.

2210 (b) A used oil aggregation point may also accept oil from DIYers.

2211 (21) "Used oil burner" means a person who burns used oil for energy recovery.

2212 (22) "Used oil collection center" means any site or facility registered with the state to  
2213 manage used oil and that accepts or aggregates and stores used oil collected from used oil  
2214 generators, other than DIYers, who are regulated under this part and bring used oil to the  
2215 collection center in shipments of no more than 55 gallons and under the provisions of this part.  
2216 Used oil collection centers may accept DIYer used oil also.

2217 (23) "Used oil fuel marketer" means any person who:

2218 (a) directs a shipment of off-specification used oil from its facility to a used oil burner;  
2219 or

2220 (b) first claims the used oil to be burned for energy recovery meets the used oil fuel  
2221 specifications of 40 CFR 279, Standards for the Management of Used Oil, except when the oil  
2222 is to be burned in accordance with rules for on-site burning in space heaters in accordance with  
2223 40 CFR 279.

2224 (24) "Used oil generator" means any person, by site, whose act or process produces  
2225 used oil or whose act first causes used oil to become subject to regulation.

2226 (25) "Used oil handler" means a person generating used oil, collecting used oil,  
2227 transporting used oil, operating a transfer facility or aggregation point, processing or rerefining  
2228 used oil, or marketing used oil.

2229 (26) "Used oil processor or rerefiner" means a facility that processes used oil.

2230 (27) "Used oil transfer facility" means any transportation-related facility, including  
2231 loading docks, parking areas, storage areas, and other areas where shipments of used oil are  
2232 held for more than 24 hours during the normal course of transportation and not longer than 35  
2233 days.

2234 (28) (a) "Used oil transporter" means the following persons unless they are exempted  
2235 under Subsection (28)(b):

2236 (i) any person who transports used oil;

2237 (ii) any person who collects used oil from more than one generator and transports the  
2238 collected oil;

2239 (iii) except as exempted under Subsection (28)(b)(i), (ii), or (iii), any person who  
2240 transports collected DIYer used oil from used oil generators, collection centers, aggregation  
2241 points, or other facilities required to be permitted or registered under this part and where  
2242 household DIYer used oil is collected; and

2243 (iv) owners and operators of used oil transfer facilities.

2244 (b) "Used oil transporter" does not include:

2245 (i) persons who transport oil on site;

2246 (ii) generators who transport shipments of used oil totalling 55 gallons or less from the  
2247 generator to a used oil collection center as allowed under 40 CFR 279.24, Off-site Shipments;

2248 (iii) generators who transport shipments of used oil totalling 55 gallons or less from the  
2249 generator to a used oil aggregation point owned or operated by the same generator as allowed  
2250 under 40 CFR 279.24, Off-site Shipments;

2251 (iv) persons who transport used oil generated by DIYers from the initial generator to a  
2252 used oil generator, used oil collection center, used oil aggregation point, used oil processor or  
2253 rerefiner, or used oil burner subject to permitting or registration under this part; or

2254 (v) railroads that transport used oil and are regulated under 49 U.S.C. Subtitle V, Rail  
2255 Programs, and 49 U.S.C. 5101 et seq., federal Hazardous Materials Transportation Uniform  
2256 Safety Act.

2257 Section 49. Section **19-6-706** is amended to read:

2258 **19-6-706. Disposal of used oil -- Prohibitions.**

2259 (1) (a) Except as authorized by the board or exempted in this section, a person may not

2260 place, discard, or otherwise dispose of used oil:

2261 (i) in any solid waste treatment, storage, or disposal facility operated by a political  
2262 subdivision or a private entity, except as authorized for the disposal of used oil that is  
2263 hazardous waste under state law;

2264 (ii) in sewers, drainage systems, septic tanks, surface or ground waters, watercourses,  
2265 or any body of water; or

2266 (iii) on the ground.

2267 (b) A person who unknowingly disposes of used oil in violation of Subsection (1)(a)(i)  
2268 is not guilty of a violation of this section.

2269 (2) (a) A person may dispose of an item or substance that contains de minimis amounts  
2270 of oil in disposal facilities under Subsection (1)(a)(i) if:

2271 (i) to the extent reasonably possible all oil has been removed from the item or  
2272 substance; and

2273 (ii) no free flowing oil remains in the item or substance.

2274 (b) (i) A nonterne plated used oil filter complies with this section if it is not mixed with  
2275 hazardous waste and the oil filter has been gravity hot-drained by one of the following  
2276 methods:

2277 (A) puncturing the filter antidrain back valve or the filter dome end and gravity  
2278 hot-draining;

2279 (B) gravity hot-draining and crushing;

2280 (C) dismantling and gravity hot-draining; or

2281 (D) any other equivalent gravity hot-draining method that will remove used oil from  
2282 the filter at least as effectively as the methods listed in this Subsection (2)(b)(i).

2283 (ii) As used in this Subsection (2), "gravity hot-drained" means drained for not less  
2284 than 12 hours near operating temperature but above 60 degrees Fahrenheit.

2285 (3) A person may not mix or commingle used oil with the following substances, except  
2286 as incidental to the normal course of processing, mechanical, or industrial operations:

2287 (a) solid waste that is to be disposed of in any solid waste treatment, storage, or  
2288 disposal facility, except as authorized by the board under this chapter; or

2289 (b) any hazardous waste so the resulting mixture may not be recycled or used for other  
2290 beneficial purpose as authorized under this part.

2291 (4) (a) This section does not apply to releases to land or water of de minimis quantities  
2292 of used oil, except:

2293 (i) the release of de minimis quantities of used oil is subject to any regulation or  
2294 prohibition under the authority of the department; and

2295 (ii) the release of de minimis quantities of used oil is subject to any rule made by the  
2296 board under this part prohibiting the release of de minimis quantities of used oil to the land or  
2297 water from tanks, pipes, or other equipment in which used oil is processed, stored, or otherwise  
2298 managed by used oil handlers, except wastewater under Subsection 19-6-708(2)(j).

2299 (b) As used in this Subsection (4), "de minimis quantities of used oil:"

2300 (i) means small spills, leaks, or drippings from pumps, machinery, pipes, and other  
2301 similar equipment during normal operations; and

2302 (ii) does not include used oil discarded as a result of abnormal operations resulting in  
2303 substantial leaks, spills, or other releases.

2304 (5) Used oil may not be used for road oiling, dust control, weed abatement, or other  
2305 similar uses that have the potential to release used oil in the environment, except in compliance  
2306 with Section 19-6-711 and board rule.

2307 (6) (a) (i) Facilities in existence on July 1, 1993, and subject to this section may apply  
2308 to the executive secretary for an extension of time beyond that date to meet the requirements of  
2309 this section.

2310 (ii) The executive secretary may grant an extension of time beyond July 1, 1993, upon  
2311 a finding of need under Subsection (6)(b) or (c).

2312 (iii) The total of all extensions of time granted to one applicant under this Subsection  
2313 (6)(a) may not extend beyond January 1, 1995.

2314 (b) The executive secretary upon receipt of a request for an extension of time may  
2315 request from the facility any information the executive secretary finds reasonably necessary to  
2316 evaluate the need for an extension. This information may include:

2317 (i) why the facility is unable to comply with the requirements of this section on or  
2318 before July 1, 1993;

2319 (ii) the processes or functions which prevent compliance on or before July 1, 1993;

2320 (iii) measures the facility has taken and will take to achieve compliance; and

2321 (iv) a proposed compliance schedule, including a proposed date for being in

2322 compliance with this section.

2323 (c) Additional extensions of time may be granted by the executive secretary upon  
2324 application by the facility and a showing by the facility that:

2325 (i) the additional extension is reasonably necessary; and

2326 (ii) the facility has made a diligent and good faith effort to comply with this section  
2327 within the time frame of the prior extension.

2328 Section 50. Section **20A-1-703** is amended to read:

2329 **20A-1-703. Proceedings by registered voter.**

2330 (1) Any registered voter who has information that any provisions of this title have been  
2331 violated by any candidate for whom the registered voter had the right to vote, by any personal  
2332 campaign committee of that candidate, by any member of that committee, or by any election  
2333 official, may file a verified petition with the lieutenant governor.

2334 (2) (a) The lieutenant governor shall gather information and determine if a special  
2335 investigation is necessary.

2336 (b) If the lieutenant governor determines that a special investigation is necessary, the  
2337 lieutenant governor shall refer the information to the attorney general, who shall:

2338 (i) bring a special proceeding to investigate and determine whether or not there has  
2339 been a violation; and

2340 (ii) appoint special counsel to conduct that proceeding on behalf of the state.

2341 (3) If it appears from the petition or otherwise that sufficient evidence is obtainable to  
2342 show that there is probable cause to believe that a violation has occurred, the attorney general  
2343 shall:

2344 (a) grant leave to bring the proceeding; and

2345 (b) appoint special counsel to conduct the proceeding.

2346 (4) (a) If leave is granted, the registered voter may, by a special proceeding brought in  
2347 the district court in the name of the state upon the relation of the registered voter, investigate  
2348 and determine whether or not the candidate, candidate's personal campaign committee, any  
2349 member of the candidate's personal campaign committee, or any election officer has violated  
2350 any provision of this title.

2351 (b) (i) In the proceeding, the complaint shall:

2352 (A) be served with the summons; and

2353 (B) set forth the name of the person or persons who have allegedly violated this title  
2354 and the grounds of those violations in detail.

2355 (ii) The complaint may not be amended except by leave of the court.

2356 (iii) The summons and complaint in the proceeding shall be filed with the court no  
2357 later than five days after they are served.

2358 (c) (i) The answer to the complaint shall be served and filed within 10 days after the  
2359 service of the summons and complaint.

2360 (ii) Any allegation of new matters in the answer shall be considered controverted by the  
2361 adverse party without reply, and the proceeding shall be considered at issue and stand ready for  
2362 trial upon five days' notice of trial.

2363 (d) (i) All proceedings initiated under this section have precedence over any other civil  
2364 actions.

2365 (ii) The court shall always be considered open for the trial of the issues raised in this  
2366 proceeding.

2367 (iii) The proceeding shall be tried and determined as a civil action without a jury, with  
2368 the court determining all issues of fact and issues of law.

2369 (iv) If more than one proceeding is pending or the election of more than one person is  
2370 investigated and contested, the court may:

2371 (A) order the proceedings consolidated and heard together; and

2372 (B) equitably apportion costs and disbursements.

2373 (e) (i) Either party may request a change of venue as provided by law in civil actions,  
2374 but application for a change of venue must be made within five days after service of summons  
2375 and complaint.

2376 (ii) The judge shall decide the request for a change of venue and issue any necessary  
2377 orders within three days after the application is made.

2378 (iii) If a party fails to request a change of venue within five days of service, he has  
2379 waived his right to a change of venue.

2380 (f) (i) If judgment is in favor of the plaintiff, the relator may petition the judge to  
2381 recover his taxable costs and disbursements against the person whose right to the office is  
2382 contested.

2383 (ii) The judge may not award costs to the defendant unless it appears that the

proceeding was brought in bad faith.

(iii) Subject to the limitations contained in Subsection (4)(f), the judge may decide whether or not to award costs and disbursements.

(5) Nothing in this section may be construed to prohibit any other civil or criminal actions or remedies against alleged violators.

(6) In the event a witness asserts a privilege against self-incrimination, testimony and evidence from the witness may be compelled pursuant to Title 77, Chapter 22b, Grants of Immunity.

Section 51. Section **20A-3-307** is amended to read:

**20A-3-307. Processing of absentee ballot.**

(1) Except as provided in Subsection (2), upon receipt of an envelope containing an absentee ballot, the election officer shall:

(a) enclose the unopened envelope containing the absentee ballot and the written application of the absentee voter in a larger envelope;

(b) seal that envelope and endorse it with:

(i) the name or number of the proper voting precinct;

(ii) the name and official title of the election officer; and

(iii) the words "This envelope contains an absentee ballot and may only be opened on election day at the polls while the polls are open."; and

(c) safely keep the envelope in his office until it is delivered by him to the proper election judges.

(2) If the election officer receives envelopes containing absentee ballots too late to transmit them to the election judges on election day, the election officer shall retain those absentee ballots in a safe and secure place until they can be processed as provided in Section 20A-3-309.

(3) (a) Except as provided in Subsection (3)(c), when reasonably possible, the election officer shall deliver or mail valid absentee ballots to the appropriate voting precinct election judges so that they may be processed at the voting precinct on election day.

(b) If the election officer is unable to determine the voting precinct to which an absentee ballot should be sent, or if a valid absentee ballot is received too late for delivery on election day to election judges, the election officer shall retain the absentee ballot in a safe

2415 place until it can be processed as required by Section 20A-3-309.

2416 (c) When the absentee ballots will be centrally counted, the election officer shall  
2417 deliver those absentee ballots to the counting center on election day for counting.

2418 Section 52. Section **20A-7-501** is amended to read:

2419 **20A-7-501. Initiatives.**

2420 (1) (a) Except as provided in Subsection (1)(b), a person seeking to have an initiative  
2421 submitted to a local legislative body or to a vote of the people for approval or rejection shall  
2422 obtain legal signatures equal to:

2423 (i) 10% of all the votes cast in the county, city, or town for all candidates for governor  
2424 at the last election at which a governor was elected if the total number of votes exceeds 25,000;

2425 (ii) 12-1/2% of all the votes cast in the county, city, or town for all candidates for  
2426 governor at the last election at which a governor was elected if the total number of votes does  
2427 not exceed 25,000 but is more than 10,000;

2428 (iii) 15% of all the votes cast in the county, city, or town for all candidates for governor  
2429 at the last election at which a governor was elected if the total number of votes does not exceed  
2430 10,000 but is more than 2,500;

2431 (iv) 20% of all the votes cast in the county, city, or town for all candidates for governor  
2432 at the last election at which a governor was elected if the total number of votes does not exceed  
2433 2,500 but is more than 500;

2434 (v) 25% of all the votes cast in the county, city, or town for all candidates for governor  
2435 at the last election at which a governor was elected if the total number of votes does not exceed  
2436 500 but is more than 250; and

2437 (vi) 30% of all the votes cast in the county, city, or town for all candidates for governor  
2438 at the last election at which a governor was elected if the total number of votes does not exceed  
2439 250.

2440 (b) In addition to the signature requirements of Subsection (1)(a), a person seeking to  
2441 have an initiative submitted to a local legislative body or to a vote of the people for approval or  
2442 rejection in a county, city, or town where the local legislative body is elected from council  
2443 districts shall obtain, from each of a majority of council districts, legal signatures equal to the  
2444 percentages established in Subsection (1)(a).

2445 (2) If the total number of certified names from each verified signature sheet equals or

exceeds the number of names required by this section, the clerk or recorder shall deliver the proposed law to the local legislative body at its next meeting.

(3) (a) The local legislative body shall either adopt or reject the proposed law without change or amendment within 30 days of receipt of the proposed law.

(b) The local legislative body may:

(i) adopt the proposed law and refer it to the people;

(ii) adopt the proposed law without referring it to the people; or

(iii) reject the proposed law.

(c) If the local legislative body adopts the proposed law but does not refer it to the people, it is subject to referendum as with other local laws.

(d) (i) If a county legislative body rejects a proposed county ordinance or amendment, or takes no action on it, the county clerk shall submit it to the voters of the county at the next regular general election.

(ii) If a local legislative body rejects a proposed municipal ordinance or amendment, or takes no action on it, the municipal recorder or clerk shall submit it to the voters of the municipality at the next municipal general election.

(e) (i) If the local legislative body rejects the proposed ordinance or amendment, or takes no action on it, the local legislative body may adopt a competing local law.

(ii) The local legislative body shall prepare and adopt the competing local law within the 30 days allowed for its action on the measure proposed by initiative petition.

(iii) If the local legislative body adopts a competing local law, the clerk or recorder shall submit it to the voters of the county or municipality at the same election at which the initiative proposal is submitted.

(f) If conflicting local laws are submitted to the people at the same election and two or more of the conflicting measures are approved by the people, then the measure that receives the greatest number of affirmative votes shall control all conflicts.

Section 53. Section **23-14-2.6** is amended to read:

**23-14-2.6. Regional advisory councils -- Creation -- Membership -- Duties -- Per diem and expenses.**

(1) There are created five regional advisory councils which shall consist of 12 to 15 members each from the wildlife region whose boundaries are established for administrative

2477 purposes by the division.

2478 (2) The members shall include individuals who represent the following groups and  
2479 interests:

2480 (a) agriculture;

2481 (b) sportsmen;

2482 (c) nonconsumptive wildlife;

2483 (d) locally elected public officials;

2484 (e) federal land agencies; and

2485 (f) the public at large.

2486 (3) The executive director of the Department of Natural Resources, in consultation  
2487 with the director of the Division of Wildlife Resources, shall select the members from a list of  
2488 nominees submitted by the respective interest group or agency.

2489 (4) The councils shall:

2490 (a) hear broad input, including recommendations, biological data, and information  
2491 regarding the effects of wildlife;

2492 (b) gather information from staff, the public, and government agencies; and

2493 (c) make recommendations to the Wildlife Board in an advisory capacity.

2494 (5) (a) Except as required by Subsection (5)(b), each member shall serve a four-year  
2495 term.

2496 (b) Notwithstanding the requirements of Subsection (5)(a), the executive director shall,  
2497 at the time of appointment or reappointment, adjust the length of terms to ensure that the terms  
2498 of council members are staggered so that approximately half of the council is appointed every  
2499 two years.

2500 (6) When a vacancy occurs in the membership for any reason, the replacement shall be  
2501 appointed for the unexpired term.

2502 (7) The councils shall determine:

2503 (a) the time and place of meetings; and

2504 (b) any other procedural matter not specified in this chapter.

2505 (8) Members of the councils shall complete an orientation course as provided in  
2506 Subsection 23-14-2(8).

2507 (9) (a) (i) Members who are not government employees shall receive no compensation

2508 or benefits for their services, but may receive per diem and expenses incurred in the  
2509 performance of the member's official duties at the rates established by the Division of Finance  
2510 under Sections 63A-3-106 and 63A-3-107.

2511 (ii) Members may decline to receive per diem and expenses for their service.

2512 (b) (i) State government officer and employee members who do not receive salary, per  
2513 diem, or expenses from their agency for their service may receive per diem and expenses  
2514 incurred in the performance of their official duties from the council at the rates established by  
2515 the Division of Finance under Sections 63A-3-106 and 63A-3-107.

2516 (ii) State government officer and employee members may decline to receive per diem  
2517 and expenses for their service.

2518 (c) (i) Local government members who do not receive salary, per diem, or expenses  
2519 from the entity that they represent for their service may receive per diem and expenses incurred  
2520 in the performance of their official duties at the rates established by the Division of Finance  
2521 under Sections 63A-3-106 and 63A-3-107.

2522 (ii) Local government members may decline to receive per diem and expenses for their  
2523 service.

2524 Section 54. Section **23-22-2** is amended to read:

2525 **23-22-2. Acceptance of Acts of Congress.**

2526 (1) The state assents to the provisions of 16 U.S.C. Sec. 669 et seq., Wildlife  
2527 Restoration Act and 16 U.S.C. 777 et seq., Sport Fish Restoration Act.

2528 (2) The division shall conduct and establish cooperative fish and wildlife restoration  
2529 projects as provided by the acts specified in Subsection (1) and rules promulgated under those  
2530 acts.

2531 (3) The following revenues received by the state may not be used for any purpose other  
2532 than the administration of the division:

2533 (a) revenue from the sale of any license, permit, tag, stamp, or certificate of registration  
2534 that conveys to a person the privilege to take wildlife for sport or recreation, less reasonable  
2535 vendor fees;

2536 (b) revenue from the sale, lease, rental, or other granting of rights of real or personal  
2537 property acquired with revenue specified in Subsection (3)(a);

2538 (c) interest, dividends, or other income earned on revenue specified in Subsection

2539 (3)(a) or (b); and

2540 (d) federal aid project reimbursements to the extent that revenue specified in  
2541 Subsection (3)(a) or (b) originally funded the project for which the reimbursement is being  
2542 made.

2543 Section 55. Section **26-18-102** is amended to read:

2544 **26-18-102. DUR Board -- Creation and membership -- Expenses.**

2545 (1) There is created a 12-member Drug Utilization Review Board responsible for  
2546 implementation of a retrospective and prospective DUR program.

2547 (2) (a) Except as required by Subsection (2)(b), as terms of current board members  
2548 expire, the executive director shall appoint each new member or reappointed member to a  
2549 four-year term.

2550 (b) Notwithstanding the requirements of Subsection (2)(a), the executive director shall,  
2551 at the time of appointment or reappointment, adjust the length of terms to ensure that the terms  
2552 of board members are staggered so that approximately half of the board is appointed every two  
2553 years.

2554 (c) Persons appointed to the board may be reappointed upon completion of their terms,  
2555 but may not serve more than two consecutive terms.

2556 (d) The executive director shall provide for geographic balance in representation on the  
2557 board.

2558 (3) When a vacancy occurs in the membership for any reason, the replacement shall be  
2559 appointed for the unexpired term.

2560 (4) The membership shall be comprised of the following:

2561 (a) four physicians who are actively engaged in the practice of medicine or osteopathic  
2562 medicine in this state, to be selected from a list of nominees provided by the Utah Medical  
2563 Association;

2564 (b) one physician in this state who is actively engaged in academic medicine;

2565 (c) three pharmacists who are actively practicing in retail pharmacy in this state, to be  
2566 selected from a list of nominees provided by the Utah Pharmaceutical Association;

2567 (d) one pharmacist who is actively engaged in academic pharmacy;

2568 (e) one person who shall represent consumers;

2569 (f) one person who shall represent pharmaceutical manufacturers, to be recommended

2570 by the Pharmaceutical Manufacturers Association; and

2571 (g) one dentist licensed to practice in this state under Title 58, Chapter 69, Dentists and  
2572 Dental Hygienists Act, who is actively engaged in the practice of dentistry, nominated by the  
2573 Utah Dental Association.

2574 (5) Physician and pharmacist members of the board shall have expertise in clinically  
2575 appropriate prescribing and dispensing of outpatient drugs.

2576 (6) The board shall elect a chair from among its members who shall serve a one-year  
2577 term, and may serve consecutive terms.

2578 (7) (a) Members shall receive no compensation or benefits for their services, but may  
2579 receive per diem and expenses incurred in the performance of the member's official duties at  
2580 the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

2581 (b) Members may decline to receive per diem and expenses for their service.

2582 (c) (i) Higher education members who do not receive salary, per diem, or expenses  
2583 from the entity that they represent for their service may receive per diem and expenses incurred  
2584 in the performance of their official duties from the committee at the rates established by the  
2585 Division of Finance under Sections 63A-3-106 and 63A-3-107.

2586 (ii) Higher education members may decline to receive per diem and expenses for their  
2587 service.

2588 Section 56. Section **26A-1-111** is amended to read:

2589 **26A-1-111. Removal of local health officer.**

2590 (1) The local health officer may be removed for cause in accordance with this section  
2591 by:

2592 (a) the board; or

2593 (b) a majority of the counties in the local health department if the county executives  
2594 rescind, or withdraw, in writing the ratification of the local health officer.

2595 (2) (a) A hearing shall be granted, if requested by the local health officer, prior to  
2596 removal of the local health officer.

2597 (b) If a hearing is requested, it shall be conducted by a five-member panel with:

2598 (i) two elected members from the county or counties in the local health department,  
2599 selected by the county executives;

2600 (ii) two members of the board of the local health department who are not elected

officials of the counties in the local health department, selected by the board; and

(iii) one member selected by the members appointed under Subsections (2)(b)(i) and (ii), however, the member appointed under this Subsection (2)(b)(iii) may not be an elected official of the counties in the local health department and may not be a member of the board of the local health department.

(c) (i) The hearing panel shall report its decision regarding termination to the board and to the counties in the local health department.

(ii) The counties and board receiving the report shall vote on whether to retain or terminate the local health officer.

(iii) The health officer is terminated if:

(A) the board votes to terminate; or

(B) a majority of the counties in the local health department vote to terminate.

Section 57. Section **31A-5-217.5** is amended to read:

**31A-5-217.5. Variable contract law.**

(1) This section applies to all separate accounts that are used to support any one or more of the following:

(a) variable life insurance policies that satisfy the requirements of Section 817, Internal Revenue Code;

(b) variable annuity contracts, including modified guaranteed annuities; or

(c) benefits under plans governed by the Employee Retirement Income Security Act of 1974.

(2) In the event of a conflict between this section and any other section of this title as it relates to these accounts, this section prevails.

(3) A domestic life insurance company may establish one or more separate accounts, and may allocate to those accounts amounts, which include proceeds applied under optional modes of settlement or under dividend options, to provide for life insurance or annuities, and benefits incidental to life insurance or annuities, payable in fixed or variable amounts or both, subject to the following:

(a) The income, gains, and losses, realized or unrealized, from assets allocated to a separate account shall be credited to or charged against the account, without regard to other income, gains, or losses of the company.

(b) Except as may be provided with respect to reserves for guaranteed benefits and funds referred to in Subsection (3)(c):

(i) amounts allocated to any separate account and accumulations on such amounts may be invested and reinvested without regard to any requirements or limitations prescribed by the laws of this state governing the investments of life insurance companies; and

(ii) the investments in any such separate account may not be taken into account in applying the investment limitations that otherwise apply to the investments of the company.

(c) Except with the approval of the commissioner and under any conditions as to investments and other matters as he may prescribe, which shall recognize the guaranteed nature of the benefits provided, reserves for benefits guaranteed as to dollar amount and duration, and funds guaranteed as to principal amount or stated rate of interest may not be maintained in a separate account.

(d) Unless otherwise approved by the commissioner, assets allocated to a separate account shall be valued at their market value on the date of valuation, or if there is no readily available market, then as provided under the terms of the contract or the rules or other written agreement that applies to the separate account. However, unless otherwise approved by the commissioner, the portion of any of the assets of the separate account equal to the company's reserve liability with regard to the guaranteed benefits and funds referred to in Subsection (3)(c) shall be valued in accordance with the rules that otherwise apply to the company's assets.

(e) Amounts allocated to a separate account in the exercise of the power granted by this section shall be owned by the company, and the company may not be, nor hold itself out to be, a trustee with respect to those amounts. If, and to the extent provided under the applicable contracts, that portion of the assets of any separate account that is equal to the reserves and other contract liabilities with respect to the account may not be chargeable with liabilities arising out of any other business the company may conduct.

(f) A sale, exchange, or other transfer of assets may not be made by a company between any of its separate accounts or between any other investment account and one or more of its separate accounts unless, in case of a transfer into a separate account, the transfer is made solely to establish the account or to support the operation of the contracts with respect to the separate account to which the transfer is made, and unless the transfer, whether into or from a separate account, is made by a transfer of cash, or by a transfer of securities having a readily

determinable market value, if the transfer of securities is approved by the commissioner. The commissioner may approve other transfers among such accounts if, in his opinion, the transfers would not be inequitable.

(g) To the extent a company considers it necessary to comply with any applicable federal or state laws, the company, with respect to any separate account, including any separate account which is a management investment company or a unit investment trust, may provide for persons having an interest in the account appropriate voting and other rights and special procedures for the conduct of the business of the account, including special rights and procedures relating to investment policy, investment advisory services, selection of independent public accountants, and the selection of a committee, the members of which need not be otherwise affiliated with the company, to manage the business of the account.

(4) Any contract providing benefits payable in variable amounts delivered or issued for delivery in this state shall contain a statement of the essential features of the procedures to be followed by the insurance company in determining the dollar amount of the variable benefits. Any contract under which the benefits vary to reflect investment experience, including a group contract and any certificate in evidence of variable benefits issued under a group contract, shall state that the dollar amount will vary according to investment experience. The contract shall contain on its first page a statement to the effect that the benefits under the contract are on a variable basis.

(5) (a) A company may not deliver or issue for delivery within this state variable contracts unless it is licensed or organized to do a life insurance or annuity business in this state, and the commissioner is satisfied that its condition or method of operation in connection with the issuance of such contracts will not render its operation hazardous to the public or its policyholders in this state. In this connection, the commissioner shall consider among other things:

- (i) the history and financial condition of the company;
- (ii) the character, responsibility, and fitness of the officers and directors of the company; and
- (iii) (A) the law and regulation under which the company is authorized in the state of domicile to issue variable contracts[-]; and
- (B) the state of entry of an alien company shall be considered its place of domicile for

the purposes of Subsection (5)(a)(iii)(A).

(b) If the company is a subsidiary of an admitted life insurance company, or affiliated with such a company through common management or ownership, it may be considered by the commissioner to have met the provisions of this section if either it or the parent or the affiliated company meets the requirements of this section.

(6) Notwithstanding any other provision of law, the commissioner shall have sole authority to regulate the issuance and sale of variable contracts, and to make rules necessary and appropriate to carry out the purposes and provisions of this chapter.

(7) (a) Except for Sections 31A-22-402, 31A-22-407, and 31A-22-409, in the case of a variable annuity contract and Sections 31A-22-402, 31A-22-407, and 31A-22-408 in the case of a variable life insurance policy, and except as otherwise provided in this chapter, all pertinent provisions of this title apply to separate accounts and contracts relating to the separate accounts. Any individual variable life insurance contract, delivered or issued for delivery in this state shall contain grace, reinstatement, and nonforfeiture provisions appropriate to the contract.

(b) The reserve liability for variable contracts shall be established in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees.

Section 58. Section **31A-8-103** is amended to read:

**31A-8-103. Applicability to other provisions of law.**

(1) (a) Except for exemptions specifically granted under this title, an organization is subject to regulation under all of the provisions of this title.

(b) Notwithstanding any provision of this title, an organization licensed under this chapter:

(i) is wholly exempt from:

(A) Chapter 7, Nonprofit Health Service Insurance Corporations;

(B) Chapter 9, Insurance Fraternal;

(C) Chapter 10, Annuities;

(D) Chapter 11, Motor Clubs;

(E) Chapter 12, State Risk Management Fund;

(F) Chapter 13, Employee Welfare Funds and Plans;

2725 (G) Chapter 19a, Utah Rate Regulation Act; and  
2726 (H) Chapter 28, Guaranty Associations; and  
2727 (ii) is not subject to:  
2728 (A) Chapter 3, Department Funding, Fees, and Taxes, except for Part 1, Funding the  
2729 Insurance Department;  
2730 (B) Section 31A-4-107;  
2731 (C) Chapter 5, Domestic Stock and Mutual Insurance Corporations, except for  
2732 provisions specifically made applicable by this chapter;  
2733 (D) Chapter 14, Foreign Insurers, except for provisions specifically made applicable by  
2734 this chapter;  
2735 (E) Chapter 17, Determination of Financial Condition, except:  
2736 (I) [~~Parts 2 and 6~~] Part 2, Qualified Assets, and Part 6, Risk-Based Capital; or  
2737 (II) as made applicable by the commissioner by rule consistent with this chapter;  
2738 (F) Chapter 18, Investments, except as made applicable by the commissioner by rule  
2739 consistent with this chapter; and  
2740 (G) Chapter 22, Contracts in Specific Lines, except for [~~Parts 6, 7, and 12~~] Part 6,  
2741 Accident and Health Insurance, Part 7, Group Accident and Health Insurance, and Part 12,  
2742 Reinsurance.  
2743 (2) The commissioner may by rule waive other specific provisions of this title that the  
2744 commissioner considers inapplicable to health maintenance organizations or limited health  
2745 plans, upon a finding that the waiver will not endanger the interests of:  
2746 (a) enrollees;  
2747 (b) investors; or  
2748 (c) the public.  
2749 (3) Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, and Title 16,  
2750 Chapter 10a, Utah Revised Business Corporation Act, do not apply to an organization except as  
2751 specifically made applicable by:  
2752 (a) this chapter;  
2753 (b) a provision referenced under this chapter; or  
2754 (c) a rule adopted by the commissioner to deal with corporate law issues of health  
2755 maintenance organizations that are not settled under this chapter.

(4) (a) Whenever in this chapter, Chapter 5, Domestic Stock and Mutual Insurance Corporations, or Chapter 14, Foreign Insurers, is made applicable to an organization, the application is:

(i) of those provisions that apply to a mutual corporation if the organization is nonprofit; and

(ii) of those that apply to a stock corporation if the organization is for profit.

(b) When Chapter 5, Domestic Stock and Mutual Insurance Corporations, or Chapter 14, Foreign Insurers, is made applicable to an organization under this chapter, "mutual" means nonprofit organization.

(5) Solicitation of enrollees by an organization is not a violation of any provision of law relating to solicitation or advertising by health professionals if that solicitation is made in accordance with:

(a) this chapter; and

(b) Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and Reinsurance Intermediaries.

(6) This title does not prohibit any health maintenance organization from meeting the requirements of any federal law that enables the health maintenance organization to:

(a) receive federal funds; or

(b) obtain or maintain federal qualification status.

(7) Except as provided in Section 31A-8-501, an organization is exempt from statutes in this title or department rules that restrict or limit the organization's freedom of choice in contracting with or selecting health care providers, including Section 31A-22-618.

(8) An organization is exempt from the assessment or payment of premium taxes imposed by Sections 59-9-101 through 59-9-104.

Section 59. Section **31A-15-202** is amended to read:

**31A-15-202. Definitions.**

As used in this part:

(1) "Completed operations liability" means liability, including liability for activities which are completed or abandoned before the date of the occurrence giving rise to the liability, arising out of the installation, maintenance, or repair of any product at a site which is not owned or controlled by:

- 2787 (a) any person who performs that work; or  
2788 (b) any person who hires an independent contractor to perform that work.
- 2789 (2) "Domicile," for purposes of determining the state in which a purchasing group is  
2790 domiciled, means:
- 2791 (a) for a corporation, the state in which the purchasing group is incorporated; and  
2792 (b) for an unincorporated entity, the state of its principal place of business.
- 2793 (3) "Hazardous financial condition" means that a risk retention group, based on its  
2794 present or reasonably anticipated financial condition, although not yet financially impaired or  
2795 insolvent, is unlikely to be able:
- 2796 (a) to meet obligations to policyholders with respect to known claims and reasonably  
2797 anticipated claims; or  
2798 (b) to pay other obligations in the normal course of business.
- 2799 (4) "Insurance" means primary insurance, excess insurance, reinsurance, surplus lines  
2800 insurance, and any other arrangement for shifting and distributing risk which is determined to  
2801 be insurance under the laws of this state.
- 2802 (5) (a) "Liability" means legal liability for damages, including costs of defense, legal  
2803 costs and fees, and other claims expenses because of injuries to other persons, damage to their  
2804 property, or other damage or loss to other persons, resulting from or arising out of:
- 2805 (i) any profit or nonprofit business, trade, product, professional or other services,  
2806 premises, or operations; or  
2807 (ii) any activity of any state or local government or any agency or political subdivision  
2808 of any state or local government.
- 2809 (b) "Liability" does not include personal risk liability and an employer's liability with  
2810 respect to its employees other than legal liability under the federal Employers' Liability Act.
- 2811 (6) "NAIC" means the National Association of Insurance Commissioners.
- 2812 (7) "Personal risk liability" means liability for damages because of injury to any person,  
2813 damage to property, or other loss or damage resulting from any personal, familial, or household  
2814 responsibilities or activities rather than from responsibilities or activities referred to in  
2815 Subsection (5).
- 2816 (8) "Plan of operation or a feasibility study" means an analysis which presents the  
2817 expected activities and results of a risk retention group, including:

(a) information sufficient to verify that its members are engaged in businesses or activities similar or related with respect to the liability to which members are exposed by virtue of any related, similar or common business, trade, product, services, premises or operations;

(b) for each state in which it intends to operate, the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer;

(c) historical and expected loss experience of the proposed members and national experience of similar exposures to the extent that this experience is reasonably available;

(d) pro forma financial statements and projections;

(e) appropriate opinions by a qualified, independent casualty actuary, including a determination of minimum premium or participation levels required to commence operations and to prevent a hazardous financial condition;

(f) identification of management, underwriting and claims procedures, marketing methods, managerial oversight methods, investment policies, and reinsurance agreements;

(g) identification of each state in which the risk retention group has obtained, or sought to obtain, a charter and license, and a description of its status in each such state; and

(h) any other matters required by the commissioner of the state in which the risk retention group is chartered for liability insurance companies authorized by the insurance laws of that state.

(9) (a) "Product liability" means liability for damages because of any personal injury, death, emotional harm, consequential economic damage, or property damage, including damages resulting from the loss of use of property, if the liability arises out of the manufacture, design, importation, distribution, packaging, labeling, lease, or sale of a product.

(b) "Product liability" does not include the liability of any person for those damages described in Subsection (9)(a) if the product involved was in the possession of the person when the incident giving rise to the claim occurred.

(10) "Purchasing group" means any group which:

(a) has as one of its purposes the purchase of liability insurance on a group basis;

(b) purchases liability insurance only for its group members and only to cover their similar or related liability exposure, as described in Subsection (10)(c);

(c) is composed of members whose businesses or activities are similar or related with

2849 respect to the liability to which members are exposed by virtue of any related, similar, or  
2850 common business, trade, products, services, premises, or operations; and

2851 (d) is domiciled in any state.

2852 (11) "Risk retention group" means any corporation or other limited liability  
2853 association:

2854 (a) whose primary activity consists of assuming and spreading all, or any portion of,  
2855 the liability exposure of its group members;

2856 (b) which is organized for the primary purpose of conducting the activity described  
2857 under Subsection (11)(a);

2858 (c) which:

2859 (i) is chartered and licensed as a liability insurance company and authorized to engage  
2860 in the business of insurance under the laws of any state; or

2861 (ii) (A) before January 1, 1985, was chartered or licensed and authorized to engage in  
2862 the business of insurance under the laws of Bermuda or the Cayman Islands and, before  
2863 January 1, 1985, had certified to the insurance commissioner of at least one state that it  
2864 satisfied the capitalization requirements of that state;

2865 (B) however, any such group as described in Subsection (11)(c)(ii)(A) shall be  
2866 considered to be a risk retention group only if it has been engaged in business continuously  
2867 since January 1, 1985, and only for the purpose of continuing to provide insurance to cover  
2868 product liability or completed operations liability, as these terms were defined in the Product  
2869 Liability Risk Retention Act of 1981 before the date of the enactment of the Liability Risk  
2870 Retention Act of 1986;

2871 (d) which does not exclude any person from membership in the group solely to provide  
2872 for members of the group a competitive advantage over the excluded person;

2873 (e) which:

2874 (i) has as its owners only persons who comprise the membership of the risk retention  
2875 group and who are provided insurance by the group; or

2876 (ii) has as its sole owner an organization which:

2877 (A) has as its members only persons who comprise the membership of the risk  
2878 retention group; and

2879 (B) has as its owners only persons who comprise the membership of the risk retention

group and who are provided insurance by the group;

(f) whose members are engaged in businesses or activities similar or related with respect to the liability to which the members are exposed by virtue of any related, similar, or common business trade, products, services, premises or operations;

(g) whose activities do not include providing insurance other than:

(i) liability insurance for assuming and spreading all or any portion of the liability of its group members; and

(ii) reinsurance with respect to the liability of any other risk retention group, or any members of the other group, which is engaged in businesses or activities so that the group or member meets the requirement described in Subsection (11)(f) for membership in the risk retention group which provides the reinsurance; and

(h) the name of which includes the phrase "risk retention group."

Section 60. Section **31A-16-106** is amended to read:

**31A-16-106. Standards and management of an insurer within a holding company system.**

(1) (a) Transactions within a holding company system to which an insurer subject to registration is a party are subject to the following standards:

(i) the terms shall be fair and reasonable;

(ii) charges or fees for services performed shall be reasonable;

(iii) expenses incurred and payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied;

(iv) the books, accounts, and records of each party to all transactions shall be so maintained as to clearly and accurately disclose the nature and details of the transactions, including the accounting information necessary to support the reasonableness of the charges or fees to the respective parties; and

(v) the insurer's surplus held for policyholders, following any dividends or distributions to shareholder affiliates, shall be reasonable in relation to the insurer's outstanding liabilities and shall be adequate to its financial needs.

(b) The following transactions involving a domestic insurer and any person in its holding company system may not be entered into unless the insurer has notified the commissioner in writing of its intention to enter into the transaction at least 30 days prior to

entering into the transaction, or within any shorter period the commissioner may permit, if the commissioner has not disapproved the transaction within the period:

(i) sales, purchases, exchanges, loans or extensions of credit, guarantees, or investments if the transactions are equal to, or exceed as of the next preceding December 31:

(A) for nonlife insurers, the lesser of 3% of the insurer's admitted assets or 25% of surplus held for policyholders;

(B) for life insurers, 3% of the insurer's admitted assets;

(ii) loans or extensions of credit made to any person who is not an affiliate, if the insurer makes the loans or extensions of credit with the agreement or understanding that the proceeds of the transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, any affiliate of the insurer making the loans or extensions of credit if the transactions are equal to, or exceed as of the next preceding December 31:

(A) for nonlife insurers, the lesser of 3% of the insurer's admitted assets or 25% of surplus held for policyholders;

(B) for life insurers, 3% of the insurer's admitted assets;

(iii) reinsurance agreements or modifications to reinsurance agreements in which the reinsurance premium or a change in the insurer's liabilities equals or exceeds 5% of the insurer's surplus held for policyholders, as of the next preceding December 31, including those agreements which may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and the nonaffiliate that any portion of the assets will be transferred to one or more affiliates of the insurer;

(iv) all management agreements, service contracts, and all cost-sharing arrangements;

(v) any material transactions, specified by rule, which the commissioner determines may adversely affect the interests of the insurer's policyholders; and

(vi) this subsection may not be interpreted to authorize or permit any transactions which would be otherwise contrary to law in the case of an insurer not a member of the same holding company system.

(c) A domestic insurer may not enter into transactions which are part of a plan or series of like transactions with persons within the holding company system if the purpose of the separate transactions is to avoid the statutory threshold amount and thus to avoid the review by

the commissioner that would occur otherwise. If the commissioner determines that the separate transactions were entered into over any 12 month period for such a purpose, he may exercise his authority under Section 31A-16-110.

(d) The commissioner, in reviewing transactions pursuant to Subsection (1)(b), shall consider whether the transactions comply with the standards set forth in Subsection (1)(a) and whether they may adversely affect the interests of policyholders.

(e) The commissioner shall be notified within 30 days of any investment of the domestic insurer in any one corporation, if the total investment in the corporation by the insurance holding company system exceeds 10% of the corporation's voting securities.

(2) (a) A domestic insurer may not pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until:

(i) 30 days after the commissioner has received notice of the declaration of the dividend and has not within the 30-day period disapproved the payment; or

(ii) the commissioner has approved the payment within the 30-day period.

(b) For purposes of this subsection, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, fair market value of which, together with that of other dividends or distributions made within the preceding 12 months, exceeds the lesser of:

(i) 10% of the insurer's surplus held for policyholders as of the next preceding December 31; or

(ii) the net gain from operations of the insurer, if the insurer is a life insurer, or the net income, if the insurer is not a life insurer, not including realized capital gains, for the 12-month period ending the next preceding December 31;

(iii) an extraordinary dividend does not include pro rata distributions of any class of the insurer's own securities.

(c) In determining whether a dividend or distribution is extraordinary, an insurer other than a life insurer may carry forward net income from the previous two calendar years that has not already been paid out as dividends. This carry-forward shall be computed by taking the net income from the second and third preceding calendar years, not including realized capital gains, less dividends paid in the second and immediate preceding calendar years.

(d) Notwithstanding any other provision of law, an insurer may declare an

2973 extraordinary dividend or distribution, which is conditioned upon the commissioner's approval  
2974 of the dividend or distribution, and the declaration shall confer no rights upon shareholders  
2975 until:

2976 (i) the commissioner has approved the payment of the dividend or distribution; or

2977 (ii) the commissioner has not disapproved the payment within the 30-day period  
2978 referred to in Subsection (2)(a).

2979 (3) (a) Notwithstanding the control of a domestic insurer by any person, the officers  
2980 and directors of the insurer may not be relieved of any obligation or liability to which they  
2981 would otherwise be subject by law, and the insurer shall be managed so as to assure its separate  
2982 operating identity consistent with this chapter.

2983 (b) Nothing in this section precludes a domestic insurer from having or sharing a  
2984 common management or cooperative or joint use of personnel, property, or services with one or  
2985 more other persons under arrangements meeting the standards of Subsection (1)(a).

2986 Section 61. Section **31A-17-506** is amended to read:

2987 **31A-17-506. Computation of minimum standard by calendar year of issue.**

2988 (1) Applicability of Section 31A-17-506: The interest rates used in determining the  
2989 minimum standard for the valuation shall be the calendar year statutory valuation interest rates  
2990 as defined in this section for:

2991 (a) all life insurance policies issued in a particular calendar year, on or after the  
2992 operative date of Subsection 31A-22-408(6)(d);

2993 (b) all individual annuity and pure endowment contracts issued in a particular calendar  
2994 year on or after January 1, 1982;

2995 (c) all annuities and pure endowments purchased in a particular calendar year on or  
2996 after January 1, 1982, under group annuity and pure endowment contracts; and

2997 (d) the net increase, if any, in a particular calendar year after January 1, 1982, in  
2998 amounts held under guaranteed interest contracts.

2999 (2) Calendar year statutory valuation interest rates:

3000 (a) The calendar year statutory valuation interest rates, "I," shall be determined as  
3001 follows and the results rounded to the nearer 1/4 of 1%:

3002 (i) for life insurance:

3003 
$$I = .03 + W(R1 - .03) + (W/2)(R2 - .09);$$

(ii) for single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and from guaranteed interest contracts with cash settlement options:

$$I = .03 + W(R - .03),$$

where  $R_1$  is the lesser of  $R$  and  $.09$ ,

$R_2$  is the greater of  $R$  and  $.09$ ,

$R$  is the reference interest rate defined in Subsection (4), and

$W$  is the weighting factor defined in this section;

(iii) for other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on an issue year basis, except as stated in Subsection (2)(a)(ii), the formula for life insurance stated in Subsection (2)(a)(i) shall apply to annuities and guaranteed interest contracts with guarantee durations in excess of 10 years, and the formula for single premium immediate annuities stated in Subsection (2)(a)(ii) shall apply to annuities and guaranteed interest contracts with guarantee duration of 10 years or less;

(iv) for other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the formula for single premium immediate annuities stated in Subsection (2)(a)(ii) shall apply[-]; and

(v) for other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, the formula for single premium immediate annuities stated in Subsection (2)(a)(ii) shall apply.

(b) However, if the calendar year statutory valuation interest rate for any life insurance policies issued in any calendar year determined without reference to this sentence differs from the corresponding actual rate for similar policies issued in the immediately preceding calendar year by less than  $1/2$  of 1% the calendar year statutory valuation interest rate for such life insurance policies shall be equal to the corresponding actual rate for the immediately preceding calendar year. For purposes of applying the immediately preceding sentence, the calendar year statutory valuation interest rate for life insurance policies issued in a calendar year shall be determined for 1980, using the reference interest rate defined in 1979, and shall be determined for each subsequent calendar year regardless of when Subsection 31A-22-408(6)(d) becomes operative.

(3) Weighting factors:

3035 (a) The weighting factors referred to in the formulas stated in Subsection (2) are given  
 3036 in the following tables:

3037 (i) (A) Weighting factors for life insurance:

3038	Guarantee Duration (Years)	Weighting Factors
3039	10 or less:	.50
3040	More than 10, but less than 20:	.45
3041	More than 20:	.35

3042 (B) For life insurance, the guarantee duration is the maximum number of years the life  
 3043 insurance can remain in force on a basis guaranteed in the policy or under options to convert to  
 3044 plans of life insurance with premium rates or nonforfeiture values or both which are guaranteed  
 3045 in the original policy;

3046 (ii) Weighting factor for single premium immediate annuities and for annuity benefits  
 3047 involving life contingencies arising from other annuities with cash settlement options and  
 3048 guaranteed interest contracts with cash settlement options: .80

3049 (iii) Weighting factors for other annuities and for guaranteed interest contracts, except  
 3050 as stated in Subsection (3)(a)(ii), shall be as specified in the tables in Subsections (3)(a)(iii)(A),  
 3051 (B), and (C) [below], according to the rules and definitions in [(D), (E), and (F) below]  
 3052 Subsection (3)(b):

3053 (A) For annuities and guaranteed interest contracts valued on an issue year basis:

3054	Guarantee Duration (Years)	Weighting Factors for Plan Type		
3055		A	B	C
3056	5 or less:	.80	.60	.50
3057	More than 5, but not more than 10:	.75	.60	.50
3058	More than 10, but not more than 20:	.65	.50	.45
3059	More than 20:	.45	.35	.35

3060	Plan Type		
3061	A	B	C

3062 (B) For annuities and guaranteed interest  
 3063 contracts valued on a change in fund basis, the  
 3064 factors shown in Subsection (3)(a)(iii)(A) [above]  
 3065 increased by:

.15	.25	.05
-----	-----	-----

	Plan Type		
	A	B	C
3066			
3067			
3068			
3069			
3070			
3071			
3072			
3073			
3074			
3075			
3076			
3077			
3078			
3079			
3080			
3081			
3082			
3083			
3084			
3085			
3086			
3087			
3088			
3089			
3090			
3091			
3092			
3093			
3094			
3095			
3096			

(C) For annuities and guaranteed interest contracts valued on an issue year basis, other than those with no cash settlement options, which do not guarantee interest on considerations received more than one year after issue or purchase and for annuities and guaranteed interest contracts valued on a change in fund basis which do not guarantee interest rates on considerations received more than 12 months beyond the valuation date, the factors shown in Subsection (3)(a)(iii)(A) or derived in Subsection (3)(a)(iii)(B) increased by: .05 .05 .05.

~~[(D)]~~ (b) (i) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the guarantee duration is the number of years for which the contract guarantees interest rates in excess of the calendar year statutory valuation interest rate for life insurance policies with guarantee duration in excess of 20 years. For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the guaranteed duration is the number of years from the date of issue or date of purchase to the date annuity benefits are scheduled to commence.

~~[(E)]~~ (ii) Plan type as used in the above tables is defined as follows:

(A) Plan Type A: At any time policyholder may withdraw funds only:

(I) with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company~~[-or]~~;

(II) without such adjustment but installments over five years or more~~[-or]~~;

(III) as an immediate life annuity~~[-]~~; or

(IV) no withdrawal permitted.

(B) (I) Plan Type B: Before expiration of the interest rate guarantee, policyholder withdraw funds only:

~~[(F)]~~ (Aa) with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company~~[-or (H)]~~;

3097            (Bb) without such adjustment but in installments over five years or more~~[-];~~ or ~~[(Hb)]~~

3098            (Cc) no withdrawal permitted.

3099            (II) At the end of interest rate guarantee, funds may be withdrawn without such  
3100 adjustment in a single sum or installments over less than five years.

3101            (C) Plan Type C: Policyholder may withdraw funds before expiration of interest rate  
3102 guarantee in a single sum or installments over less than five years either:

3103            (I) without adjustment to reflect changes in interest rates or asset values since receipt of  
3104 the funds by the insurance company~~[-];~~ or

3105            (II) subject only to a fixed surrender charge stipulated in the contract as a percentage of  
3106 the fund.

3107            ~~[(F)]~~ (iii) A company may elect to value guaranteed interest contracts with cash  
3108 settlement options and annuities with cash settlement options on either an issue year basis or on  
3109 a change in fund basis. Guaranteed interest contracts with no cash settlement options and other  
3110 annuities with no cash settlement options must be valued on an issue year basis. As used in this  
3111 section, an issue year basis of valuation refers to a valuation basis under which the interest rate  
3112 used to determine the minimum valuation standard for the entire duration of the annuity or  
3113 guaranteed interest contract is the calendar year valuation interest rate for the year of issue or  
3114 year of purchase of the annuity or guaranteed interest contract, and the change in fund basis of  
3115 valuation refers to a valuation basis under which the interest rate used to determine the  
3116 minimum valuation standard applicable to each change in the fund held under the annuity or  
3117 guaranteed interest contract is the calendar year valuation interest rate for the year of the  
3118 change in the fund.

3119            (4) Reference interest rate: "Reference interest rate" referred to in Subsection (2)(a) is  
3120 defined as follows:

3121            (a) For all life insurance, the lesser of the average over a period of 36 months and the  
3122 average over a period of 12 months, ending on June 30 of the calendar year next preceding the  
3123 year of issue, of the Monthly Average of the composite Yield on Seasoned Corporate Bonds, as  
3124 published by Moody's Investors Service, Inc.

3125            (b) For single premium immediate annuities and for annuity benefits involving life  
3126 contingencies arising from other annuities with cash settlement options and guaranteed interest  
3127 contracts with cash settlement options, the average over a period of 12 months, ending on June

3128 30 of the calendar year of issue or year of purchase, of the Monthly Average of the Composite  
3129 Yield on Seasoned Corporate Bonds, as published by Moody's Investors Service, Inc.

3130 (c) For other annuities with cash settlement options and guaranteed interest contracts  
3131 with cash settlement options, valued on a year of issue basis, except as stated in Subsection  
3132 (4)(b), with guarantee duration in excess of 10 years, the lesser of the average over a period of  
3133 36 months and the average over a period of 12 months, ending on June 30 of the calendar year  
3134 of issue or purchase, of the Monthly Average of the Composite Yield on Seasoned Corporate  
3135 Bonds, as published by Moody's Investors Service, Inc.

3136 (d) For other annuities with cash settlement options and guaranteed interest contracts  
3137 with cash settlement options, valued on a year of issue basis, except as stated in Subsection  
3138 (4)(b), with guarantee duration of 10 years or less, the average over a period of 12 months,  
3139 ending on June 30 of the calendar year of issue or purchase, of the Monthly Average of the  
3140 Composite Yield on Seasoned Corporate Bonds, as published by Moody's Investors Service,  
3141 Inc.

3142 (e) For other annuities with no cash settlement options and for guaranteed interest  
3143 contracts with no cash settlement options, the average over a period of 12 months, ending on  
3144 June 30 of the calendar year of issue or purchase, of the Monthly Average of the Composite  
3145 Yield on Seasoned Corporate Bonds, as published by Moody's Investors Service, Inc.

3146 (f) For other annuities with cash settlement options and guaranteed interest contracts  
3147 with cash settlement options, valued on a change in fund basis, except as stated in Subsection  
3148 (4)(b), the average over a period of 12 months, ending on June 30 of the calendar year of the  
3149 change in the fund, of the Monthly Average of the Composite Yield on Seasoned Corporate  
3150 Bonds, as published by Moody's Investors Service, Inc.

3151 (5) Alternative method for determining reference interest rates: In the event that the  
3152 Monthly Average of the Composite Yield on Seasoned Corporate Bonds is no longer published  
3153 by Moody's Investors Service, Inc. or in the event that the National Association of Insurance  
3154 Commissioners determines that the Monthly Average of the Composite Yield on Seasoned  
3155 Corporate Bonds as published by Moody's Investors Service, Inc. is no longer appropriate for  
3156 the determination of the reference interest rate, then an alternative method for determination of  
3157 the reference interest rate, which is adopted by the National Association of Insurance  
3158 Commissioners and approved by rule promulgated by the commissioner, may be substituted.

3159 Section 62. Section **36-20-2** is amended to read:

3160 **36-20-2. Judicial Rules Review Committee.**

3161 (1) There is created a six member Judicial Rules Review Committee.

3162 (2) (a) The committee shall be composed of three members of the Senate, at least one  
3163 from each political party, appointed by the president of the Senate, and three members of the  
3164 House, at least one from each political party, appointed by the speaker of the House of  
3165 Representatives.

3166 (b) Members shall serve for two-year terms or until their successors are appointed.

3167 (c) A vacancy exists whenever a committee member ceases to be a member of the  
3168 Legislature or when a member resigns from the committee. Vacancies shall be filled by the  
3169 appointing authority, and the replacement shall serve out the unexpired term.

3170 (d) The members may meet as needed to review or recommend:

3171 (i) court rules or proposals for court rules;

3172 (ii) any conflicts between court rules or proposals for court rules and statute or state  
3173 constitution; and

3174 (iii) proposed legislative action relating to Subsections (2)(d)(i) and (ii).

3175 Section 63. Section **39-1-1** is amended to read:

3176 **39-1-1. Militia -- How constituted -- Persons exempted.**

3177 (1) All able-bodied citizens, and all able-bodied persons of foreign birth who have  
3178 declared their intention to become citizens, who are 18 years of age or older and younger than  
3179 45 years of age, who are residents of this state, constitute the militia, subject to the following  
3180 exemptions:

3181 (a) persons exempted by laws of the United States;

3182 (b) persons exempted by the laws of this state;

3183 (c) all persons who have been honorably discharged from the army, air force, navy, or  
3184 volunteer forces of the United States;

3185 (d) active members of any regularly organized fire or police department in any city or  
3186 town, but no member of the active militia is relieved from duty because of his joining any  
3187 volunteer fire company or department;

3188 (e) judges and clerks of courts of record, state and county civil officers holding office  
3189 by election, state officers appointed by the governor for a specified term of office, ministers of

the gospel, practicing physicians, superintendents, officers and assistants of hospitals, prisons and jails, conductors, brakemen, flagmen, engineers and firemen of railways, and all other employees of railways actually employed in train service; and

(f) idiots, lunatics, and persons convicted of infamous crime.

(2) All exempted persons, except those enumerated in Subsections (1)(a) through (f), are liable to military duty in case of war, insurrection, invasion, tumult, riot, or public disaster, or imminent danger of any of these, or after they have voluntarily enlisted in the National Guard of this state.

Section 64. Section **40-6-6.5** is amended to read:

**40-6-6.5. Pooling of interests for the development and operation of a drilling unit**  
**-- Board may order pooling of interests -- Payment of costs and royalty interests --**  
**Monthly accounting.**

(1) Two or more owners within a drilling unit may bring together their interests for the development and operation of the drilling unit.

(2) (a) In the absence of a written agreement for pooling, the board may enter an order pooling all interests in the drilling unit for the development and operation of the drilling unit.

(b) The order shall be made upon terms and conditions that are just and reasonable.

(c) The board may adopt terms appearing in an operating agreement:

(i) for the drilling unit that is in effect between the consenting owners;

(ii) submitted by any party to the proceeding; or

(iii) submitted by its own motion.

(3) (a) Operations incident to the drilling of a well upon any portion of a drilling unit covered by a pooling order shall be deemed for all purposes to be the conduct of the operations upon each separately owned tract in the drilling unit by the several owners.

(b) The portion of the production allocated or applicable to a separately owned tract included in a drilling unit covered by a pooling order shall, when produced, be deemed for all purposes to have been produced from that tract by a well drilled on it.

(4) (a) (i) Each pooling order shall provide for the payment of just and reasonable costs incurred in the drilling and operating of the drilling unit including, but not limited to:

(A) the costs of drilling, completing, equipping, producing, gathering, transporting, processing, marketing, and storage facilities;

3221 (B) reasonable charges for the administration and supervision of operations; and

3222 (C) other costs customarily incurred in the industry.

3223 (ii) An owner is not liable under a pooling order for costs or losses resulting from the  
3224 gross negligence or willful misconduct of the operator.

3225 (b) Each pooling order shall provide for reimbursement to the consenting owners for  
3226 any nonconsenting owner's share of the costs out of production from the drilling unit  
3227 attributable to his tract.

3228 (c) Each pooling order shall provide that each consenting owner shall own and be  
3229 entitled to receive, subject to royalty or similar obligations:

3230 (i) the share of the production of the well applicable to his interest in the drilling unit;  
3231 and

3232 (ii) unless he has agreed otherwise, his proportionate part of the nonconsenting owner's  
3233 share of the production until costs are recovered as provided in Subsection (4)(d).

3234 (d) (i) Each pooling order shall provide that each nonconsenting owner shall be entitled  
3235 to receive, subject to royalty or similar obligations, the share of the production of the well  
3236 applicable to his interest in the drilling unit after the consenting owners have recovered from  
3237 the nonconsenting owner's share of production the following amounts less any cash  
3238 contributions made by the nonconsenting owner:

3239 (A) 100% of the nonconsenting owner's share of the cost of surface equipment beyond  
3240 the wellhead connections, including stock tanks, separators, treaters, pumping equipment, and  
3241 piping;

3242 (B) 100% of the nonconsenting owner's share of the estimated cost to plug and  
3243 abandon the well as determined by the board;

3244 (C) 100% of the nonconsenting owner's share of the cost of operation of the well  
3245 commencing with first production and continuing until the consenting owners have recovered  
3246 all costs; and

3247 (D) an amount to be determined by the board but not less than 150% nor greater than  
3248 300% of the nonconsenting owner's share of the costs of staking the location, wellsite  
3249 preparation, rights-of-way, rigging up, drilling, reworking, recompleting, deepening or  
3250 plugging back, testing, and completing, and the cost of equipment in the well to and including  
3251 the wellhead connections.

3252 (ii) The nonconsenting owner's share of the costs specified in Subsection (4)(d)(i) is  
3253 that interest which would have been chargeable to the nonconsenting owner had he initially  
3254 agreed to pay his share of the costs of the well from commencement of the operation.

3255 (iii) A reasonable interest charge may be included if the board finds it appropriate.

3256 (e) If there is any dispute about costs, the board shall determine the proper costs.

3257 (5) If a nonconsenting owner's tract in the drilling unit is subject to a lease or other  
3258 contract for the development of oil and gas, the pooling order shall provide that the consenting  
3259 owners shall pay any royalty interest or other interest in the tract not subject to the deduction of  
3260 the costs of production from the production attributable to that tract.

3261 (6) (a) If a nonconsenting owner's tract in the drilling unit is not subject to a lease or  
3262 other contract for the development of oil and gas, the pooling order shall provide that the  
3263 nonconsenting owner shall receive as a royalty the average landowner's royalty attributable to  
3264 each tract within the drilling unit.

3265 (b) The royalty shall be:

3266 (i) determined prior to the commencement of drilling; and

3267 (ii) paid from production attributable to each tract until the consenting owners have  
3268 recovered the costs specified in Subsection (4)(d).

3269 (7) The operator of a well under a pooling order in which there are nonconsenting  
3270 owners shall furnish the nonconsenting owners with monthly statements specifying:

3271 (a) costs incurred;

3272 (b) the quantity of oil or gas produced; and

3273 (c) the amount of oil and gas proceeds realized from the sale of the production during  
3274 the preceding month.

3275 (8) Each pooling order shall provide that when the consenting owners recover from a  
3276 nonconsenting owner's relinquished interest the amounts provided for in Subsection (4)(d):

3277 (a) the relinquished interest of the nonconsenting owner shall automatically revert to  
3278 him;

3279 (b) the nonconsenting owner shall from that time:

3280 (i) own the same interest in the well and the production from it; and

3281 (ii) be liable for the further costs of the operation as if he had participated in the initial  
3282 drilling and operation; and

3283 (c) costs are payable out of production unless otherwise agreed between the  
3284 nonconsenting owner and the operator.

3285 (9) Each pooling order shall provide that in any circumstance where the nonconsenting  
3286 owner has relinquished his share of production to consenting owners or at any time fails to take  
3287 his share of production in-kind when he is entitled to do so, the nonconsenting owner is entitled  
3288 to:

3289 (a) an accounting of the oil and gas proceeds applicable to his relinquished share of  
3290 production; and

3291 (b) payment of the oil and gas proceeds applicable to that share of production not taken  
3292 in-kind, net of costs.

3293 Section 65. Section **40-6-9** is amended to read:

3294 **40-6-9. Proceeds from sale of production -- Payment of proceeds -- Requirements**  
3295 **-- Proceeding on petition to determine cause of nonpayment -- Remedies -- Penalties.**

3296 (1) (a) The oil and gas proceeds derived from the sale of production from any well  
3297 producing oil or gas in the state shall be paid to any person legally entitled to the payment of  
3298 the proceeds not later than 180 days after the first day of the month following the date of the  
3299 first sale and thereafter not later than 30 days after the end of the calendar month within which  
3300 payment is received by the payor for production, unless other periods or arrangements are  
3301 provided for in a valid contract with the person entitled to the proceeds.

3302 (b) The payment shall be made directly to the person entitled to the payment by the  
3303 payor.

3304 (c) The payment is considered to have been made upon deposit in the United States  
3305 mail.

3306 (2) Payments shall be remitted to any person entitled to oil and gas proceeds annually  
3307 for the aggregate of up to 12 months accumulation of proceeds, if the total amount owed is  
3308 \$100 or less.

3309 (3) (a) Any delay in determining whether a person is legally entitled to an interest in  
3310 the oil and gas proceeds does not affect payments to other persons entitled to payment.

3311 (b) (i) If accrued payments cannot be made within the time limits specified in  
3312 Subsection (1) or (2), the payor shall deposit all oil and gas proceeds credited to the eventual  
3313 oil and gas proceeds owner to an escrow account in a federally insured bank or savings and

3314 loan institution using a standard escrow document form.

3315 (ii) The deposit shall earn interest at the highest rate being offered by that institution  
3316 for the amount and term of similar demand deposits.

3317 (iii) The escrow agent may commingle money received into escrow from any one  
3318 lessee or operator, purchaser, or other person legally responsible for payment.

3319 (iv) Payment of principal and accrued interest from the escrow account shall be made  
3320 by the escrow agent to the person legally entitled to them within 30 days from the date of  
3321 receipt by the escrow agent of final legal determination of entitlement to the payment.

3322 (v) Applicable escrow fees shall be deducted from the payments.

3323 (4) Any person entitled to oil and gas proceeds may file a petition with the board to  
3324 conduct a hearing to determine why the proceeds have not been paid.

3325 (5) Upon receipt of the petition, the board shall set the matter for investigation and  
3326 negotiation by the division within 60 days.

3327 (6) (a) If the matter cannot be resolved by negotiation as of that date, the board may set  
3328 a hearing within 30 days.

3329 (b) If the board does not set a hearing, any information gathered during the  
3330 investigation and negotiation shall be given to the petitioner who may then seek a remedy in a  
3331 court of competent jurisdiction.

3332 (7) (a) If, after a hearing, the board finds the proceeds have not been deposited in an  
3333 interest bearing escrow account in accordance with Subsection (3), the board may order that:

3334 (i) a complete accounting be made; and

3335 (ii) the proceeds be subject to an interest rate of 1-1/2% per month, as a substitute for  
3336 an escrow account interest rate, accruing from the date the payment should have been  
3337 suspended in accordance with Subsection (3).

3338 (b) If, after a hearing, the board finds the delay of payment is without reasonable  
3339 justification, the board may:

3340 (i) if the proceeds have been deposited in an interest bearing escrow account in  
3341 accordance with Subsection (3):

3342 (A) order a complete accounting;

3343 (B) require the proceeds and accruing interest to remain in the escrow account; and

3344 (C) assess a penalty of up to 25% of the total proceeds and interest in the escrow

3345 account; or

3346 (ii) if the proceeds have not been deposited in an interest bearing escrow account in  
3347 accordance with Subsection (3), assess a penalty of up to 25% of the total proceeds and interest  
3348 as determined under Subsection (7)(a).

3349 (c) (i) Upon finding that the delay of payment is without reasonable justification, the  
3350 board shall set a date not later than 90 days from the hearing for final distribution of the total  
3351 sum.

3352 (ii) If payment is not made by the required date, the total proceeds, interest, and any  
3353 penalty as provided in Subsection (7)(b) shall be subject to interest at a rate of 1-1/2% per  
3354 month until paid.

3355 (d) If, after a hearing, the board finds the delay of payment is with reasonable  
3356 justification and the proceeds have been deposited in an interest bearing escrow account in  
3357 accordance with Subsection (3), the payor may not be required to make an accounting or  
3358 payment of appropriately suspended proceeds until the condition which justified suspension  
3359 has been satisfied.

3360 (8) The circumstances under which the board may find the suspension of payment of  
3361 proceeds is made with reasonable justification, such that the penalty provisions of Subsections  
3362 (7)(b) and (7)(c)(ii) do not apply, include, but are not limited to, the following:

3363 (a) the payor:

3364 (i) fails to make the payment in good faith reliance upon a title opinion by a licensed  
3365 Utah attorney objecting to the lack of good and marketable title of record of the person  
3366 claiming entitlement to payment; and

3367 (ii) furnishes a copy of the relevant portions of the opinion to the person for necessary  
3368 curative action;

3369 (b) the payor receives information which:

3370 (i) in the payor's good faith judgment, brings into question the entitlement of the person  
3371 claiming the right to the payment to receive that payment;

3372 (ii) has rendered the title unmarketable; or

3373 (iii) may expose the payor to the risk of liability to third parties if the payment is made;

3374 (c) the total amount of oil and gas proceeds in possession of the payor owed to the  
3375 person making claim to payment is less than \$100 at the end of any month; or

(d) the person entitled to payment has failed or refused to execute a division or transfer order acknowledging the proper interest to which the person claims to be entitled and setting forth the mailing address to which payment may be directed, provided the division or transfer order does not alter or amend the terms of the lease.

(9) If the circumstances described in Subsection (8)(a) or (b) arise, the payor may:

(a) suspend and escrow the payments in accordance with Subsection (3); or

(b) at the request and expense of the person claiming entitlement to the payment, make the payment into court on an interpleader action to resolve the claim and avoid liability under this chapter.

Section 66. Section **40-10-3** is amended to read:

**40-10-3. Definitions.**

For the purposes of this chapter:

(1) "Adjudicative proceeding" means:

(a) a division or board action or proceeding determining the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, permit, or license; or

(b) judicial review of a division or board action or proceeding specified in Subsection (1)(a).

(2) "Alluvial valley floors" mean the unconsolidated stream laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities but does not include upland areas which are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation and windblown deposits.

(3) "Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated; but water impoundments may be permitted where the division determines that they are in compliance with Subsection 40-10-17(2)(h).

3407 (4) "Board" means the Board of Oil, Gas, and Mining and the board shall not be  
3408 defined as an employee of the division.

3409 (5) "Division" means the Division of Oil, Gas, and Mining.

3410 (6) "Imminent danger to the health and safety of the public" means the existence of any  
3411 condition or practice, or any violation of a permit or other requirement of this chapter in a  
3412 surface coal mining and reclamation operation, which condition, practice, or violation could  
3413 reasonably be expected to cause substantial physical harm to persons outside the permit area  
3414 before the condition, practice, or violation can be abated. A reasonable expectation of death or  
3415 serious injury before abatement exists if a rational person, subjected to the same conditions or  
3416 practices giving rise to the peril, would not expose himself or herself to the danger during the  
3417 time necessary for abatement.

3418 (7) "Employee" means those individuals in the employ of the division and excludes the  
3419 board.

3420 (8) "Lands eligible for remining" means those lands that would otherwise be eligible  
3421 for expenditures under Section 40-10-25 or 40-10-25.1.

3422 (9) "Operator" means any person, partnership, or corporation engaged in coal mining  
3423 who removes or intends to remove more than 250 tons of coal from the earth by coal mining  
3424 within 12 consecutive calendar months in any one location.

3425 (10) "Other minerals" mean clay, stone, sand, gravel, metalliferous and  
3426 nonmetalliferous ores, and any other solid material or substances of commercial value  
3427 excavated in solid or solution form from natural deposits on or in the earth, exclusive of coal  
3428 and those minerals which occur naturally in liquid or gaseous form.

3429 (11) "Permit" means a permit to conduct surface coal mining and reclamation  
3430 operations issued by the division.

3431 (12) "Permit applicant" or "applicant" means a person applying for a permit.

3432 (13) "Permitting agency" means the division.

3433 (14) "Permit area" means the area of land indicated on the approved map submitted by  
3434 the operator with his application, which area of land shall be covered by the operator's bond as  
3435 required by Section 40-10-15 and shall be readily identifiable by appropriate markers on the  
3436 site.

3437 (15) "Permittee" means a person holding a permit.

3438           (16) "Person" means an individual, partnership, association, society, joint stock  
3439 company, firm, company, corporation, or other governmental or business organization.

3440           (17) "Prime farmland" means the same as prescribed by the United States Department  
3441 of Agriculture on the basis of such factors as moisture availability, temperature regime,  
3442 chemical balance, permeability, surface layer composition, susceptibility to flooding, and  
3443 erosion characteristics.

3444           (18) "Reclamation plan" means a plan submitted by an applicant for a permit which  
3445 sets forth a plan for reclamation of the proposed surface coal mining operations pursuant to  
3446 Section 40-10-10.

3447           (19) "Surface coal mining and reclamation operations" mean surface mining operations  
3448 and all activities necessary and incident to the reclamation of these operations after the  
3449 effective date of this chapter.

3450           (20) "Surface coal mining operations" mean:

3451           (a) Activities conducted on the surface of lands in connection with a surface coal mine  
3452 or subject to the requirements of Section 40-10-18, surface operations and surface impacts  
3453 incident to an underground coal mine, the products of which enter commerce or the operations  
3454 of which directly or indirectly affect interstate commerce. These activities include excavation  
3455 for the purpose of obtaining coal, including such common methods as contour, strip, auger,  
3456 mountaintop removal box cut, open pit, and area mining, the uses of explosives and blasting,  
3457 and in situ distillation or retorting, leaching or other chemical or physical processing, and the  
3458 cleaning, concentrating, or other processing or preparation, loading of coal for interstate  
3459 commerce at or near the mine site; but these activities do not include the extraction of coal  
3460 incidental to the extraction of other minerals where coal does not exceed 16-2/3% of the  
3461 tonnage of minerals removed for purposes of commercial use or sale or coal explorations  
3462 subject to Section 40-10-8.

3463           (b) The areas upon which the activities occur or where the activities disturb the natural  
3464 land surface. These areas shall also include any adjacent land the use of which is incidental to  
3465 the activities, all lands affected by the construction of new roads or the improvement or use of  
3466 existing roads to gain access to the site of the activities and for haulage and excavations,  
3467 workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles,  
3468 overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage

areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or materials on the surface resulting from or incident to the activities.

(21) "Unanticipated event or condition" means an event or condition encountered in a remining operation that was not contemplated by the applicable surface coal mining and reclamation permit.

(22) "Unwarranted failure to comply" means the failure of a permittee to prevent the occurrence of any violation of his permit or any requirement of this chapter due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of the permit or this chapter due to indifference, lack of diligence, or lack of reasonable care.

Section 67. Section **40-10-18** is amended to read:

**40-10-18. Underground coal mining -- Rules regarding surface effects -- Operator requirements -- Repair or compensation for damage -- Replacement of water.**

(1) The board shall adopt rules directed toward the surface effects of underground coal mining operations that incorporate the requirements provided in this section. In adopting any rules, the board shall consider the distinct difference between surface coal mining and underground coal mining methods.

(2) Each permit relating to underground coal mining issued pursuant to this chapter shall require the operator to comply with this section.

(3) (a) Except in those instances where the mining technology used requires planned subsidence in a predictable and controlled manner, the operator shall adopt measures consistent with known technology to:

(i) prevent subsidence from causing material damage, to the extent technologically and economically feasible;

(ii) maximize mine stability; and

(iii) maintain the value and reasonably foreseeable use of the surface lands.

(b) Nothing in Subsection (3)(a) shall be construed to prohibit the standard method of room and pillar mining.

(4) The operator shall seal all portals, entryways, drifts, shafts, or other openings between the surface and underground mine working when no longer needed for the conduct of the mining operations.

(5) The operator shall fill or seal exploratory holes no longer necessary for mining, maximizing to the extent technologically and economically feasible, the return of mine and processing waste, tailings, and any other waste incident to the mining operation, to the mine workings or excavations.

(6) (a) With respect to surface disposal of mine wastes, tailings, coal processing wastes, and other wastes in areas other than the mine workings or excavations, the operator shall stabilize all waste piles created from current operations through construction in compacted layers, including the use of incombustible and impervious materials, if necessary.

(b) The operator shall assure that:

(i) the leachate will not degrade surface or ground waters below water quality standards established pursuant to applicable federal and state law;

(ii) the final contour of the waste accumulation will be compatible with natural surroundings; and

(iii) the site is stabilized and revegetated according to the provisions of this section.

(7) In accordance with the standards and criteria developed pursuant to Section 40-10-17, the operator shall design, locate, construct, operate, maintain, enlarge, modify, and remove or abandon all existing and new coal mine waste piles consisting of mine wastes, tailings, coal processing wastes, or other liquid and solid wastes that are used either temporarily or permanently as dams or embankments.

(8) The operator shall establish on regraded areas and all other lands affected, a diverse and permanent vegetative cover that is:

(a) capable of self-regeneration and plant succession; and

(b) at least equal in extent of cover to the natural vegetation of the area.

(9) The operator shall protect offsite areas from damages which may result from the mining operations.

(10) The operator shall eliminate fire hazards and other conditions which constitute a hazard to health and safety of the public.

(11) The operator shall minimize the disturbances of the prevailing hydrologic balance at the mine site and in associated offsite areas and to the quantity of water in surface and groundwater systems both during and after coal mining operations and during reclamation by:

(a) avoiding acid or other toxic mine drainage by such measures as, but not limited to:

3531 (i) preventing or removing water from contact with toxic-producing deposits;  
3532 (ii) treating drainage to reduce toxic content which adversely affects downstream water  
3533 upon being released to water courses; or

3534 (iii) casing, sealing, or otherwise managing boreholes, shafts, and wells to keep acid or  
3535 other toxic drainage from entering ground and surface waters;

3536 (b) conducting surface coal mining operations to prevent, to the extent possible using  
3537 the best technology currently available, additional contributions of suspended solids to  
3538 streamflow or runoff outside the permit area, but in no event shall these contributions be in  
3539 excess of requirements set by applicable state or federal law; and

3540 (c) avoiding channel deepening or enlargement in operations requiring the discharge of  
3541 water from mines.

3542 (12) (a) The standards established under Section 40-10-17 for surface coal mining  
3543 operations shall apply to:

3544 (i) the construction of new roads or the improvement or use of existing roads to gain  
3545 access to the site of activities conducted on the surface of lands in connection with an  
3546 underground coal mine and for haulage;

3547 (ii) repair areas, storage areas, processing areas, shipping areas, and other areas upon  
3548 which are sited structures, facilities, or other property or materials on the surface, resulting  
3549 from or incident to activities conducted on the surface of land in connection with an  
3550 underground coal mine; and

3551 (iii) other surface impacts of underground coal mining not specified in this section.

3552 (b) The division shall make the modification in the requirements imposed by  
3553 Subsection (12)(a) as are necessary to accommodate the distinct difference between surface and  
3554 underground coal mining methods.

3555 (13) To the extent possible using the best technology currently available, minimize  
3556 disturbances and adverse impacts of the operation on fish, wildlife, and related environmental  
3557 values, and achieve enhancement of these resources where practicable.

3558 (14) The operator shall locate openings for all new drift mines working acid producing  
3559 or iron producing coal seams in a manner as to prevent a gravity discharge of water from the  
3560 mine.

3561 (15) (a) Underground coal mining operations conducted after October 24, 1992, shall

be subject to the requirements specified in Subsections (15)(b) and (c).

(b) (i) The permittee shall promptly repair, or compensate for, material damage resulting from subsidence caused to any occupied residential dwelling and related structures or noncommercial building due to underground coal mining operations.

(ii) Repair of damage will include rehabilitation, restoration, or replacement of the damaged occupied residential dwelling and related structures or noncommercial building.

(iii) Compensation shall be provided to the owner of the damaged occupied residential dwelling and related structures or noncommercial building and will be in the full amount of the diminution in value resulting from the subsidence.

(iv) Compensation may be accomplished by the purchase, prior to mining, of a noncancellable premium prepaid insurance policy.

(c) Subject to the provisions of Section 40-10-29, the permittee shall promptly replace any state-appropriated water in existence prior to the application for a surface coal mining and reclamation permit, which has been affected by contamination, diminution, or interruption resulting from underground coal mining operations.

(d) Nothing in this Subsection (15) shall be construed to prohibit or interrupt underground coal mining operations.

(e) Within one year after the date of enactment of this Subsection (15), the board shall adopt final rules to implement this Subsection (15).

Section 68. Section **41-1a-510** is amended to read:

**41-1a-510. Sales tax payment required.**

(1) (a) Except as provided in Subsection (1)(b), the division before issuing a certificate of title to a vehicle, vessel, or outboard motor shall require from every applicant:

(i) a receipt from the division showing that the sales tax has been paid to the state on the sale of the vehicle, vessel, or outboard motor upon which application for certificate of title has been made; or

(ii) a certificate from the division showing that no sales tax is due.

(b) If a licensed dealer has made a report of sale, no receipt or certificate is required.

(2) The division may also issue an Affidavit of Mobile Home Affixture for a manufactured home or mobile home if the applicant complies with Subsection (1).

Section 69. Section **41-1a-1001** is amended to read:

**41-1a-1001. Definitions.**

As used in Sections 41-1a-1001 through 41-1a-1008:

(1) "Certified vehicle inspector" means a person employed by the Motor Vehicle Enforcement Division as qualified through experience, training, or both to identify and analyze damage to vehicles with either unibody or conventional frames.

(2) "Major component part" means:

(a) the front body component of a motor vehicle consisting of the structure forward of the firewall;

(b) the passenger body component of a motor vehicle including the firewall, roof, and extending to and including the rear-most seating;

(c) the rear body component of a motor vehicle consisting of the main cross member directly behind the rear-most seating excluding any auxiliary seating and structural body assembly rear of the cross members; and

(d) the frame of a motor vehicle consisting of the structural member that supports the auto body.

(3) (a) "Major damage" means damage to a major component part of the motor vehicle requiring 10 or more hours to repair or replace, as determined by a collision estimating guide recognized by the Motor Vehicle Enforcement Division.

(b) For purposes of Subsection (3)(a) repair or replacement hours do not include time spent on cosmetic repairs.

(4) "Owner" means the person who has the legal right to possession of the vehicle.

(5) (a) "Salvage certificate" means a certificate of ownership issued for a salvage vehicle before a new certificate of title is issued for the vehicle.

(b) A salvage certificate is not valid for registration purposes.

(6) "Salvage vehicle" means any vehicle:

(a) damaged by collision, flood, or other occurrence to the extent that the cost of repairing the vehicle for safe operation exceeds its fair market value; or

(b) that has been declared a salvage vehicle by an insurer or other state or jurisdiction, but is not precluded from further registration and titling.

(7) "Unbranded title" means a certificate of title for a previously damaged motor vehicle without any designation that the motor vehicle has been damaged.

(8) "Vehicle damage disclosure statement" means the form designed and furnished by the Motor Vehicle Enforcement Division for a damaged motor vehicle inspection under Section 41-1a-1002.

Section 70. Section **41-1a-1002** is amended to read:

**41-1a-1002. Unbranded title -- Prerepair inspections -- Interim repair inspections -- Repair.**

(1) To obtain an unbranded title to a salvage vehicle:

(a) the vehicle must:

(i) be a motor vehicle;

(ii) (A) have an unbranded Utah title or a Utah salvage certificate issued to replace an unbranded Utah title at the time the motor vehicle is inspected under Subsection (1)(a)(iii); or

(B) have an unbranded title from another jurisdiction and the motor vehicle shall have been damaged in Utah as evidenced by an accident report;

(iii) be inspected by a certified vehicle inspector prior to any repairs on the motor vehicle following any major damage; and

(iv) have major damage in no more than one major component part;

(b) the major damage identified by a certified vehicle inspector under Subsection (1)(a) must be repaired in accordance with standards established by the Motor Vehicle Enforcement Division;

(c) any interim inspection required by a certified vehicle inspector must be completed in accordance with the directions of the initial certified vehicle inspector and to the satisfaction of the interim certified vehicle inspector; and

(d) the owner must apply to the Motor Vehicle Enforcement Division for authorization to obtain an unbranded title under Section 41-1a-1003.

(2) A flood damaged motor vehicle does not qualify for an unbranded title.

(3) A salvage vehicle that is seven years old or older at the time of application for unbranding does not qualify for an unbranded title.

(4) The prerepair motor vehicle inspection required under Subsection (1) shall include examination of the motor vehicle and its major component parts to determine:

(a) the extent and location of the major damage to the motor vehicle;

(b) that the identification numbers of the vehicle or its parts have not been removed,

3655 falsified, altered, defaced, or destroyed; and

3656 (c) there are no indications that the vehicle or any of its parts are stolen.

3657 (5) If the certified vehicle inspector determines in an inspection under Subsection (1)  
3658 that the motor vehicle has major damage:

3659 (a) in more than one major component part, the certified vehicle inspector shall notify  
3660 the Motor Vehicle Enforcement Division and the owner that the motor vehicle does not qualify  
3661 for an unbranded title; or

3662 (b) requiring repair or replacement in one or no major component part he shall:

3663 (i) record on the vehicle damage disclosure statement the:

3664 (A) date of the inspection;

3665 (B) description of the motor vehicle including its vehicle identification number, make,  
3666 model, and year of manufacture;

3667 (C) owner of the motor vehicle and name of the lienholder, if any, shown on the  
3668 salvage certificate; and

3669 (D) major damage to the motor vehicle requiring repair or replacement;

3670 (ii) indicate that the motor vehicle may qualify for an unbranded title if the major  
3671 damage is repaired or the damaged part is replaced;

3672 (iii) sign the vehicle damage disclosure statement and attest to the information's  
3673 accuracy;

3674 (iv) indicate whether an interim inspection of the motor vehicle damage repairs is  
3675 required and which repairs require inspection prior to completion of repair work;

3676 (v) give to the owner a copy of the vehicle damage disclosure statement and deliver or  
3677 mail a copy of the statement to the lienholder, if any, shown on the salvage certificate; and

3678 (vi) file the original vehicle damage disclosure statement with the Motor Vehicle  
3679 Enforcement Division.

3680 (6) (a) Upon receipt by the Motor Vehicle Enforcement Division of notification from a  
3681 certified vehicle inspector that a motor vehicle has had a preresearch inspection, the Motor  
3682 Vehicle Enforcement Division shall make a record of the inspection.

3683 (b) Any subsequent preresearch inspections shall be disregarded by the Motor Vehicle  
3684 Enforcement Division in evaluating the major damage to the motor vehicle and the repairs  
3685 required.

(7) A person who repairs or replaces major damage identified by a certified vehicle inspector on a motor vehicle in accordance with Subsection (1) shall:

(a) record on the vehicle damage disclosure statement:

(i) a description of the repairs made to the motor vehicle including how they were made; and

(ii) his signature following the repair description with an attestation that the description is accurate;

(b) obtain the signature of the certified vehicle inspector who performs an interim inspection, attesting that the repairs identified for interim inspection were satisfactorily completed;

(c) file the original vehicle damage disclosure statement containing the repair information with the Motor Vehicle Enforcement Division; and

(d) give a copy of the vehicle damage disclosure statement to the owner.

Section 71. Section **41-3-106** is amended to read:

**41-3-106. Board -- Creation and composition -- Appointment, terms, compensation, and expenses of members -- Meetings -- Quorum -- Powers and duties -- Officers' election and duties -- Voting.**

(1) (a) There is created an advisory board of five members that shall assist and advise the administrator in the administration and enforcement of this chapter.

(b) The members shall be appointed by the governor from among the licensed motor vehicle manufacturers, distributors, factory branch and distributor branch representatives, dealers, dismantlers, transporters, remanufacturers, and body shops.

(c) (i) Except as required by Subsection (1)(c)(ii), each member shall be appointed for a term of four years or until his successor is appointed and qualified.

(ii) Notwithstanding the requirements of Subsection (1)(c)(i), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.

(d) Three members of the board shall be selected as follows:

(i) one from new motor vehicle dealers;

(ii) one from used motor vehicle dealers; and

(iii) one from manufacturers, transporters, dismantlers, crushers, remanufacturers, and body shops.

(e) (i) Members shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) Members may decline to receive per diem and expenses for their service.

(f) A majority of the members of the board constitutes a quorum and may act upon and resolve in the name of the board any matter, thing, or question referred to it by the administrator, or that the board has power to determine.

(g) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(2) (a) The board shall on the first day of each July, or as soon thereafter as practicable, elect a chair, vice chair, secretary, and assistant secretary from among its members, who shall each hold office until his successor is elected.

(b) As soon as the board elects its officers, the elected secretary shall certify the results of the election to the administrator.

(c) The chair shall preside at all meetings of the board and the secretary shall make a record of the proceedings, which shall be preserved in the office of the administrator.

(d) If the chair is absent from any meeting of the board, his duties shall be discharged by the vice chair, and if the secretary is absent, his duties shall be discharged by the assistant secretary.

(e) All members of the board may vote on any question, matter, or thing that properly comes before it.

Section 72. Section **48-2a-402** is amended to read:

**48-2a-402. Events of withdrawal.**

Except as approved by the specific written consent of all partners at the time thereof with respect to Subsections (4) through (10), a person ceases to be a general partner of a limited partnership upon the happening of any of the following events of withdrawal:

(1) The general partner withdraws from the limited partnership as provided in Section 48-2a-602.

(2) The general partner ceases to be a member of the limited partnership as provided in

3748 Section 48-2a-702.

3749 (3) The general partner is removed as a general partner in accordance with the  
3750 partnership agreement.

3751 (4) Unless otherwise provided in the partnership agreement, the general partner:

3752 (a) makes an assignment for the benefit of creditors;

3753 (b) files a voluntary petition in bankruptcy;

3754 (c) is adjudicated as bankrupt or insolvent;

3755 (d) files a petition or answer seeking for himself any reorganization, arrangement,  
3756 composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or  
3757 regulation;

3758 (e) files an answer or other pleading admitting or failing to contest the material  
3759 allegations of a petition filed against him in any proceeding described in Subsection (4)(d); or

3760 (f) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or  
3761 liquidator of the general partner or of all or any substantial part of his properties.

3762 (5) Unless otherwise provided in the partnership agreement, if within 120 days after the  
3763 commencement of any proceeding against the general partner seeking reorganization,  
3764 arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any  
3765 statute, law, or regulation, the proceeding has not been dismissed, or if within 90 days after the  
3766 appointment without his consent or acquiescence of a trustee, receiver, or liquidator of the  
3767 general partner or of all or any substantial part of his properties, the appointment is not vacated  
3768 or stayed or within 90 days after the expiration of any such stay, the appointment is not  
3769 vacated.

3770 (6) In the case of a general partner who is a natural person:

3771 (a) his death; or

3772 (b) the entry of an order by a court of competent jurisdiction adjudicating him  
3773 incompetent to manage his person or his estate.

3774 (7) In the case of a general partner who is acting as a general partner by virtue of being  
3775 a trustee of a trust, the distribution by the trustee of the trust's entire interest in the partnership,  
3776 but not merely the substitution of a new trustee.

3777 (8) In the case of a general partner that is a separate partnership, the dissolution and  
3778 completion of winding up of the separate partnership.

(9) In the case of a general partner that is a corporation, the issuance of a certificate of dissolution or its equivalent, or of a judicial decree of dissolution, for the corporation or the revocation of its charter.

(10) In the case of a person who is acting as a general partner by virtue of being a fiduciary of an estate, the distribution by the fiduciary of the estate's entire interest in the partnership.

Section 73. Section **52-3-1** is amended to read:

**52-3-1. Employment of relatives prohibited -- Exceptions.**

(1) For purposes of this section:

(a) "Appointee" means an employee whose salary, wages, pay, or compensation is paid from public funds.

(b) "Chief administrative officer" means the person who has ultimate responsibility for the operation of the department or agency of the state or a political subdivision.

(c) "Public officer" means a person who holds a position that is compensated by public funds.

(d) "Relative" means a father, mother, husband, wife, son, daughter, sister, brother, uncle, aunt, nephew, niece, first cousin, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, or daughter-in-law.

(2) (a) No public officer may employ, appoint, or vote for or recommend the appointment of a relative in or to any position or employment, when the salary, wages, pay, or compensation of the appointee will be paid from public funds and the appointee will be directly supervised by a relative, except as follows:

(i) the appointee is eligible or qualified to be employed by a department or agency of the state or a political subdivision of the state as a result of his compliance with civil service laws or regulations, or merit system laws or regulations;

(ii) the appointee will be compensated from funds designated for vocational training;

(iii) the appointee will be employed for a period of 12 weeks or less;

(iv) the appointee is a volunteer as defined by the employing entity;

(v) the appointee is the only person available, qualified, or eligible for the position; or

(vi) the chief administrative officer determines that the public officer is the only person available or best qualified to perform supervisory functions for the appointee.

3810 (b) No public officer may directly supervise an appointee who is a relative when the  
3811 salary, wages, pay, or compensation of the relative will be paid from public funds, except as  
3812 follows:

3813 (i) the relative was appointed or employed before the public officer assumed his  
3814 position, if the relative's appointment did not violate the provisions of this chapter in effect at  
3815 the time of his appointment;

3816 (ii) the appointee is eligible or qualified to be employed by a department or agency of  
3817 the state or a political subdivision of the state as a result of his compliance with civil service  
3818 laws or regulations, or merit system laws or regulations;

3819 (iii) the appointee will be compensated from funds designated for vocational training;

3820 (iv) the appointee will be employed for a period of 12 weeks or less;

3821 (v) the appointee is a volunteer as defined by the employing entity;

3822 (vi) the appointee is the only person available, qualified, or eligible for the position; or

3823 (vii) the chief administrative officer determines that the public officer is the only  
3824 person available or best qualified to perform supervisory functions for the appointee.

3825 (c) When a public officer supervises a relative under Subsection (2)(b):

3826 (i) the public officer shall make a complete written disclosure of the relationship to the  
3827 chief administrative officer of the agency or institution; and

3828 (ii) the public officer who exercises authority over a relative may not evaluate the  
3829 relative's job performance or recommend salary increases for the relative.

3830 (3) No appointee may accept or retain employment if he is paid from public funds, and  
3831 he is under the direct supervision of a relative, except as follows:

3832 (a) the relative was appointed or employed before the public officer assumed his  
3833 position, if the relative's appointment did not violate the provisions of this chapter in effect at  
3834 the time of his appointment;

3835 (b) the appointee was or is eligible or qualified to be employed by a department or  
3836 agency of the state or a political subdivision of the state as a result of his compliance with civil  
3837 service laws or regulations, or merit system laws or regulations;

3838 (c) the appointee is the only person available, qualified, or eligible for the position;

3839 (d) the appointee is compensated from funds designated for vocational training;

3840 (e) the appointee is employed for a period of 12 weeks or less;

(f) the appointee is a volunteer as defined by the employing entity; or

(g) the chief administrative officer has determined that the appointee's relative is the only person available or qualified to supervise the appointee.

Section 74. Section **53-3-213** is amended to read:

**53-3-213. Age and experience requirements to drive school bus or certain other carriers -- Misdemeanor to drive unauthorized class of motor vehicle -- Waiver of driving examination by third party certification.**

(1) (a) A person must be at least 21 years of age:

(i) to drive any school bus;

(ii) to drive any commercial motor vehicle outside this state; or

(iii) while transporting passengers for hire or hazardous materials.

(b) Subject to the requirements of Subsection (1)(a), the division may grant a commercial driver license to any applicant who is at least 18 years of age and has had at least one year of previous driving experience.

(c) It is a class C misdemeanor for any person to drive a class of motor vehicle for which he is not licensed.

(2) (a) At the discretion of the commissioner and under standards established by the division, persons employed as commercial drivers may submit a third party certification as provided in Part 4 ~~[of this chapter]~~, Uniform Commercial Driver License Act, in lieu of the driving segment of the examination.

(b) The division shall maintain necessary records and set standards to certify companies desiring to qualify under Subsection (2)(a).

Section 75. Section **53-3-225** is amended to read:

**53-3-225. Eligibility for new license after revocation.**

(1) (a) Except as provided in Subsections (1)(b) and (c), a person whose license has been revoked under this chapter may not apply for or receive any new license until the expiration of one year from the date the former license was revoked.

(b) A person's license may be revoked for a longer period as provided in:

(i) Section 53-3-220, for driving a motor vehicle while the person's license is revoked, or involvement as a driver in an accident or violation of the motor vehicle laws; and

(ii) Section 53-3-221, for failing to comply with the terms of a traffic citation.

(c) (i) The length of the revocation required by Subsection 53-3-220(1)(a)(xi), (a)(xii), (b)(i), or (b)(ii) shall be specified in an order of the court adjudicating or convicting the person of the offense.

(ii) If the person adjudicated of the offense is younger than 16 years of age, the license or driving privilege shall be revoked for a minimum of one year, from age 16, but not to exceed the date the person turns 21 years of age.

(iii) If the person adjudicated or convicted of the offense is 16 years of age or older, the license or driving privilege shall be revoked for a minimum of one year, but not to exceed five years.

(d) A revoked license may not be renewed.

(e) Application for a new license shall be filed in accordance with Section 53-3-205.

(f) The new license is subject to all provisions of an original license.

(g) The division may not grant the license until an investigation of the character, driving abilities, and habits of the driver has been made to indicate whether it is safe to grant him a license.

(2) Any resident or nonresident whose license to drive a motor vehicle in this state has been suspended or revoked under this chapter may not drive a motor vehicle in this state under a license, permit, or registration certificate issued by any other jurisdiction or other source during suspension or after revocation until a new license is obtained under this chapter.

Section 76. Section **53-3-416** is amended to read:

**53-3-416. Driving record and other information to be provided to employer.**

(1) Each person who drives a commercial motor vehicle who has a CDL issued by this state and who is convicted of violating, in any type of motor vehicle, a state or local law relating to motor vehicle traffic, other than a parking violation, in this or any other state or jurisdiction, shall notify both the division and his current employer of the conviction within 30 days of the date of conviction.

(2) A driver shall notify his current employer before the end of the business day following the day he receives notice that:

(a) his CDL is suspended, revoked, or canceled by any state;

(b) he loses the privilege to drive a commercial motor vehicle in any state or other jurisdiction for any period; or

3903 (c) he is disqualified from driving a commercial motor vehicle for any period.

3904 (3) A person who applies to be a commercial motor vehicle driver shall at the time of  
3905 application provide to the employer the following information for the 10 years prior to the date  
3906 of application:

3907 (a) a list of the names and addresses of the applicant's previous employers for which  
3908 the applicant was a driver of a commercial motor vehicle as any part of his employment;

3909 (b) the dates between which the applicant drove for each employer listed under  
3910 Subsection (3)(a); and

3911 (c) the reason the applicant's employment with each employer listed was terminated.

3912 (4) (a) An applicant shall certify that all information provided under this section is true  
3913 and complete to the best of his knowledge.

3914 (b) An employer receiving information under this section may require that an applicant  
3915 provide additional information.

3916 Section 77. Section **53-3-908** is amended to read:

3917 **53-3-908. Advisory committee.**

3918 (1) The governor shall appoint a five-member program advisory committee to assist in  
3919 the development and implementation of the program.

3920 (2) The committee members shall be appointed by the governor as follows:

3921 (a) one representative of motorcycle retail dealers;

3922 (b) one representative of peace officers;

3923 (c) one citizen not affiliated with a motorcycle dealer, manufacturer, or association;

3924 (d) one motorcycle safety foundation instructor or chief instructor; and

3925 (e) one member of an incorporated motorcycle rider organization.

3926 (3) All members of the advisory committee shall be licensed motorcyclists.

3927 (4) (a) Except as required by Subsection (4)(b), as terms of current committee members  
3928 expire, the governor shall appoint each new member or reappointed member to a four-year  
3929 term.

3930 (b) ~~[Notwithstanding the requirements of Subsection (a), the]~~ The governor shall, at the  
3931 time of appointment or reappointment, adjust the length of terms to ensure that the terms of  
3932 committee members are staggered so that approximately half of the committee is appointed  
3933 every two years.

(c) The committee shall meet at the call of the director.

(5) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(6) (a) Members shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(b) Members may decline to receive per diem and expenses for their service.

Section 78. Section **53-5-703** is amended to read:

**53-5-703. Board -- Membership -- Compensation -- Terms -- Duties.**

(1) There is created within the division the Concealed Weapon Review Board.

(2) (a) The board is comprised of not more than five members appointed by the commissioner on a bipartisan basis.

(b) The board shall include a member representing law enforcement and at least two citizens, one of whom represents sporting interests.

(3) (a) Except as required by Subsection (3)(b), as terms of current board members expire, the commissioner shall appoint each new member or reappointed member to a four-year term.

(b) Notwithstanding the requirements of Subsection (3)(a), the commissioner shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.

(4) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(5) (a) (i) Members who are not government employees shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) Members may decline to receive per diem and expenses for their service.

(b) (i) State government officer and employee members who do not receive salary, per diem, or expenses from their agency for their service may receive per diem and expenses incurred in the performance of their official duties from the board at the rates established by the

3965 Division of Finance under Sections 63A-3-106 and 63A-3-107.

3966 (ii) State government officer and employee members may decline to receive per diem  
3967 and expenses for their service.

3968 (6) The board shall meet at least quarterly, unless the board has no business to conduct  
3969 during that quarter.

3970 (7) The board, upon receiving a timely filed petition for review, shall review within a  
3971 reasonable time the denial, suspension, or revocation of a permit or a temporary permit to carry  
3972 a concealed firearm.

3973 Section 79. Section **53-6-108** is amended to read:

3974 **53-6-108. Donations, contributions, grants, gifts, bequests, devises, or**  
3975 **endowments -- Authority to accept -- Disposition.**

3976 (1) The division may accept any donations, contributions, grants, gifts, bequests,  
3977 devises, or endowments of money or property, which shall be the property of the state.

3978 (2) (a) If the donor directs that the money or property be used in a specified manner,  
3979 then the division shall use it in accordance with these directions and state law.

3980 (b) All money and the proceeds from donated property not disposed of under  
3981 Subsection (2)(a) shall be deposited in the General Fund as restricted revenue for the division.

3982 Section 80. Section **53-6-302** is amended to read:

3983 **53-6-302. Applicants for certification examination -- Requirements.**

3984 (1) Before being allowed to take a dispatcher certification examination, each applicant  
3985 shall meet the following requirements:

3986 (a) be a United States citizen;

3987 (b) be 18 years of age or older at the time of employment as a dispatcher;

3988 (c) be a high school graduate or have a G.E.D. equivalent;

3989 (d) have not been convicted of a crime for which the applicant could have been  
3990 punished by imprisonment in a federal penitentiary or by imprisonment in the penitentiary of  
3991 this or another state;

3992 (e) have demonstrated good moral character, as determined by a background  
3993 investigation; and

3994 (f) be free of any physical, emotional, or mental condition that might adversely affect  
3995 the performance of the applicant's duty as a dispatcher.

3996 (2) (a) An application for certification shall be accompanied by a criminal history  
3997 background check of local, state, and national criminal history files and a background  
3998 investigation.

3999 (b) The costs of the background check and investigation shall be borne by the applicant  
4000 or the applicant's employing agency.

4001 (i) Conviction of any offense not serious enough to be covered under Subsection (1)(d),  
4002 involving dishonesty, unlawful sexual conduct, physical violence, or the unlawful use, sale, or  
4003 possession for sale of a controlled substance is an indication that an applicant may not be of  
4004 good moral character and may be grounds for denial of certification or refusal to give a  
4005 certification examination.

4006 (ii) An applicant may be allowed to take a certification examination provisionally,  
4007 pending completion of any background check or investigation required by this Subsection  
4008 (2)(b).

4009 (3) (a) Notwithstanding Sections 77-18-9 through 77-18-17 regarding expungements,  
4010 or a similar statute or rule of any other jurisdiction, any conviction obtained in this state or  
4011 other jurisdiction, including a conviction that has been expunged, dismissed, or treated in a  
4012 similar manner to either of these procedures, may be considered for purposes of this section.

4013 (b) Subsection (3)(a) applies to convictions entered both before and after May 1, 1995.

4014 (4) Any background check or background investigation performed pursuant to the  
4015 requirements of this section shall be to determine eligibility for admission to training programs  
4016 or qualification for certification examinations and may not be used as a replacement for any  
4017 background investigations that may be required of an employing agency.

4018 Section 81. Section **53-7-102** is amended to read:

4019 **53-7-102. Definitions.**

4020 As used in this chapter:

4021 (1) "Director" means the state fire marshal appointed in accordance with Section  
4022 53-7-103.

4023 (2) "Division" means the State Fire Marshal Division created in Section 53-7-103.

4024 (3) "Fire officer" means:

4025 (a) the state fire marshal;

4026 (b) the state fire marshal's deputies or salaried assistants;

4027 (c) the fire chief or fire marshal of any county, city, or town fire department;  
4028 (d) the fire officer of any fire district;  
4029 (e) the fire officer of any special service district organized for fire protection purposes;  
4030 and  
4031 (f) authorized personnel of any of the persons specified in Subsections (3)(a) through  
4032 (e).

4033 (4) "State fire marshal" means the fire marshal appointed director by the commissioner  
4034 under Section 53-7-103.

4035 Section 82. Section **53-7-222** is amended to read:

4036 **53-7-222. Restrictions on the sale or use of fireworks.**

4037 (1) (a) The division shall test and approve a representative sample of each class C  
4038 common state approved explosive before the explosive may be sold to the public.

4039 (b) The division shall publish a list of all class C explosives that are approved for sale  
4040 to the public each year.

4041 (2) (a) Except as provided in Subsection (2)(b), class C dangerous explosives may not  
4042 be possessed, discharged, sold, or offered for retail sale.

4043 (b) (i) The following persons may purchase, possess, or discharge class C dangerous  
4044 explosives:

4045 (A) display operators who receive a license from the division in accordance with  
4046 Section 53-7-223 and approval from their local licensing authority in accordance with Section  
4047 11-3-3.5; and

4048 (B) operators approved by the Division of Wildlife Resources or Department of  
4049 Agriculture and Food to discharge agricultural and wildlife fireworks.

4050 (ii) Importers and wholesalers licensed under Section 53-7-224 may possess, sell, and  
4051 offer to sell class C dangerous explosives.

4052 (3) Unclassified fireworks may not be sold, or offered for sale.

4053 Section 83. Section **53-7-309** is amended to read:

4054 **53-7-309. Classification of applicants and licensees.**

4055 (1) To administer this part, the board shall classify all applicants and licensees as  
4056 follows:

4057 (a) Class 1: a licensed dealer who:

4058 (i) is engaged in the business of installing gas appliances or systems for the use of  
4059 LPG;

4060 (ii) sells, fills, refills, delivers, or is permitted to deliver any LPG; or

4061 (iii) is involved under both Subsection (1)(a)(i) and (ii).

4062 (b) Class 2: a business engaged in the sale, transportation, and exchange of cylinders,  
4063 or engaged in more than one of these, but not transporting or transferring gas in liquid.

4064 (c) Class 3: a business not engaged in the sale of LPG, but engaged in the sale and  
4065 installation of gas appliances or LPG systems.

4066 (d) Class 4: those businesses not specifically within classification 1, 2, or 3 may at the  
4067 discretion of the board be issued special licenses.

4068 (2) (a) Any license granted under this section entitles the licensee to operate a staffed  
4069 plant or facility consistent with the license at one location, which is stated in the license, under  
4070 Section 53-7-310.

4071 (b) For each additional staffed plant or facility owned or operated by the licensee, the  
4072 licensee shall register the additional location with the board and pay an additional annual fee,  
4073 to be set in accordance with Section 53-7-314.

4074 Section 84. Section **53-7-315** is amended to read:

4075 **53-7-315. Enforcement of part and rules.**

4076 (1) Except as provided in Subsection (6), this part, the rules made under it, and orders  
4077 issued by the board are enforced by:

4078 (a) the enforcing authority, unless otherwise provided by the board; and

4079 (b) the board.

4080 (2) (a) A person who knowingly violates or fails to comply with this part is guilty of a  
4081 class B misdemeanor and is punishable by a fine of not less than \$50 nor more than \$500.

4082 (b) A person previously convicted under Subsection (2)(a) who knowingly violates or  
4083 fails to comply with this part is guilty of a class B misdemeanor and is punishable by a fine of  
4084 not less than \$200 nor more than \$2,000.

4085 (c) Each day the violation or failure to comply continues constitutes a separate offense.

4086 (3) The enforcing authority may enter the premises of a licensee under this part, or any  
4087 building or other premises open to the public, at any reasonable time, for the purpose of  
4088 determining and verifying compliance with this part and the rules and orders of the board.

(4) An enforcing authority may declare any container, appliance, equipment, transport, or system that does not conform to the safety requirements of this part or the rules or orders of the board, or that is otherwise defective, as unsafe or dangerous for LPG service, and shall attach a red tag in a conspicuous location.

(5) (a) A person who knowingly sells, furnishes, delivers, or supplies LPG for storage in, or use or consumption by, or through, a container, appliance, transport, or system to which a red tag is attached is guilty of a class B misdemeanor punishable by a fine of not less than \$100 and not more than \$2,000.

(b) Liquefied petroleum gas shall be removed from a container to which a red tag is attached only as provided by rules made by the board.

(c) An unauthorized person who knowingly removes, destroys, or in any way obliterates a red tag attached to a container, appliance, transport, or system is guilty of a class B misdemeanor punishable by a fine of not less than \$50 and not more than \$2,000.

(d) The enforcing authority may establish and collect a fee for any services or inspections required by this part, the rules made under it, and orders issued by the board. The fee shall be reasonable and may not exceed the amount of the cost of service or inspection provided. Fees collected under this subsection may be retained by the enforcing authority, and shall be applied to the expenses of providing these services.

(6) (a) Except as provided in Subsection (6)(c), a person who fills a leased container in violation of the terms of a written lease is liable in an action by the container lessor for the greater of:

(i) the actual damages to the container lessor, including incidental and consequential damages and attorneys' fees; or

(ii) \$500 for each violation.

(b) (i) The burden of ascertaining the terms of a written lease for purposes of Subsection (a) is on the person filling the container.

(ii) A person has ascertained the terms of a written lease if he has:

(A) read the lease;

(B) received the assurance of the container owner that the lease does not prohibit the person from filling the container;

(C) obtained a signed, written statement from the lessee that the written lease does not

4120 prohibit the person from filling the container; or

4121 (D) the leased container is clearly labelled as a container subject to lease terms  
4122 prohibiting the filling of the container without the lessor's permission.

4123 (c) If a lessee or lessor misrepresents his ownership or the terms of his written lease  
4124 under Subsection (6)(b), the lessee or lessor who made the misrepresentation, and not the  
4125 person filling the tank, is liable for the damages under Subsection (6)(a).

4126 (7) If a written container lease entered into after May 1, 1992, restricts the right to fill a  
4127 leased container, the restriction shall be plainly stated in the lease in any manner designed to  
4128 draw the attention of the lessee to the lease provision, including:

4129 (a) typing the restriction in at least two point larger type than the majority of the  
4130 document type;

4131 (b) underlining the restriction; or

4132 (c) typing the restriction in boldface type.

4133 (8) A lessor whose container lease does not comply with Subsection (7) is disqualified  
4134 from protection under Subsection (6).

4135 Section 85. Section **53-10-211** is amended to read:

4136 **53-10-211. Notice required of arrest of school employee for controlled substance**  
4137 **or sex offense.**

4138 (1) The chief administrative officer of the law enforcement agency making the arrest or  
4139 receiving notice under Subsection (2) shall immediately notify the following individuals:

4140 (a) the administrator of teacher certification in the State Office of Education; and

4141 (b) the superintendent of schools of the employing public school district or, if the  
4142 offender is an employee of a private school, the administrator of that school.

4143 (2) Subsection (1) applies upon:

4144 (a) the arrest of any school employee for any offense:

4145 (i) in Section 58-37-8;

4146 (ii) in Title 76, Chapter 5, Part 4, Sexual Offenses; or

4147 (iii) involving sexual conduct; or

4148 (b) upon receiving notice from any other jurisdiction that a school employee has  
4149 committed an act which would, if committed in Utah, be an offense under Subsection (2)(a).

4150 Section 86. Section **53A-26a-305** is amended to read:

**53A-26a-305. Exemptions from certification -- Temporary or restricted certification.**

(1) The following individuals may engage in the practice of a certified interpreter, subject to the stated circumstances and limitations, without being certified under this chapter:

(a) an individual serving in the Armed Forces of the United States, the United States Public Health Service, the United States Department of Veterans Affairs, or other federal agencies while engaged in activities regulated under this chapter as a part of employment with that federal agency if the person holds a valid certificate or license to provide interpreter services issued by any other state or jurisdiction recognized by the State Board of Education;

(b) a student engaged in providing interpreter services while in training in a recognized school approved by the State Board of Education to the extent the student's activities are supervised by qualified faculty, staff, or designee, and the services are a defined part of the training program;

(c) an individual engaged in an internship, residency, apprenticeship, or on-the-job training program approved by the State Board of Education while under the supervision of qualified persons;

(d) an individual residing in another state and certified or licensed to provide interpreter services in that state, who is called in for a consultation by an individual certified to provide interpreter services in this state, and the services provided are limited to that consultation;

(e) an individual who is invited by a recognized school, association, or other body approved by the State Board of Education to conduct a lecture, clinic, or demonstration on interpreter services if the individual does not establish a place of business or regularly engage in the practice of providing interpreter services in this state; and

(f) an individual licensed in another state or country who is in this state temporarily to attend to the needs of an athletic team or group, except that the individual may only attend to the needs of the team or group, including all individuals who travel with the team or group, except as a spectator.

(2) (a) An individual temporarily in this state who is exempted from certification under Subsection (1) shall comply with each requirement of the jurisdiction from which the individual derives authority to practice.

(b) Violation of any limitation imposed by this section is grounds for removal of exempt status, denial of certification, or another disciplinary proceeding.

(3) (a) Upon the declaration of a national, state, or local emergency, the State Board of Education, in collaboration with the advisory board, may suspend the requirements for permanent or temporary certification of persons who are certified or licensed in another state.

(b) Individuals exempt under Subsection (3)(a) shall be exempt from certification for the duration of the emergency while engaged in providing interpreter services for which they are certified or licensed in the other state.

(4) The State Board of Education, after consulting with the advisory board, may adopt rules for the issuance of temporary or restricted certifications if their issuance is necessary to or justified by:

(a) a lack of necessary available interpretive services in any area or community of the state, if the lack of services might be reasonably considered to materially jeopardize compliance with state or federal law; or

(b) a need to first observe an applicant for certification in a monitored or supervised practice of providing interpretive services before a decision is made by the board either to grant or deny the applicant a regular certification.

Section 87. Section **53B-12-104** is amended to read:

**53B-12-104. Guarantee Fund -- Sources -- Use -- Valuation and restoration of assets -- Other funds.**

(1) The authority shall establish the Utah Higher Education Assistance Authority Guarantee Fund from the following sources:

(a) insurance premiums;

(b) money appropriated and made available by the state for the purpose of the guarantee fund;

(c) money directed by the authority to be transferred to the guarantee fund; and

(d) other money made available to the authority for the purpose of the guarantee fund from other sources.

(2) (a) Money held in the guarantee fund shall be used only for payments required under the authority's guarantee agreements and for other purposes authorized by applicable federal regulations.

4213 (b) Income or interest earned by the investment of money held in the guarantee fund  
4214 remains in the fund.

4215 (c) The authority may provide by resolution or guarantee agreement that it may not  
4216 guarantee a loan if the assets of the fund are less than 1% of the unpaid principal amount  
4217 outstanding upon all loans guaranteed by the fund, or a greater amount as determined by the  
4218 authority.

4219 (d) In computing the assets of the fund for the purposes of this section, securities are  
4220 valued at par, cost, or by such other method of valuation as the authority may provide by  
4221 resolution or agreement.

4222 (e) In the event assets in the fund are less than 1%, or a greater amount as determined  
4223 by the authority under Subsection (2)(c), the chairman of the authority shall annually, before  
4224 the second day of December, certify to the governor and to the Director of Finance the amounts  
4225 required to restore the assets of the fund to the required amount. The governor may request an  
4226 appropriation of the certified amount from the Legislature in order to restore the required  
4227 amount to the fund.

4228 (3) The authority may create and establish other subfunds as are necessary or desirable  
4229 for its purposes.

4230 Section 88. Section **53B-21-102** is amended to read:

4231 **53B-21-102. Bonds do not create state indebtedness -- Special obligations --**  
4232 **Discharge of bonded indebtedness -- Agreements and covenants by the board regarding**  
4233 **bonds -- Enforcement by court action.**

4234 (1) (a) The bonds issued under this chapter are not an indebtedness of the state, of the  
4235 institution for which they are issued, or of the board.

4236 (b) They are special obligations payable solely from the revenues derived from the  
4237 operation of the building and student building fees, land grant interest, net profits from  
4238 proprietary activities, and any other revenues pledged other than appropriations by the  
4239 Legislature as provided in Sections 53B-21-101 and 53B-21-111.

4240 (c) (i) Notwithstanding any other provision of law, the chair of the board shall certify  
4241 annually by December 1 any amount required to:

4242 (A) restore any debt service reserve funds established by the board for bonds issued  
4243 under this chapter to the amount required by the related authorizing proceedings; or

4244 (B) meet projected shortfalls of payment of principal or interest or both for the  
4245 following year on any bonds issued under this chapter.

4246 (ii) The governor may request from the Legislature an appropriation of the amount  
4247 certified under Subsection (1)(c)(i) to restore the debt service reserve funds to their required  
4248 amounts or to meet any projected principal or interest payment deficiency.

4249 (d) (i) The state may not alter, impair, or limit the rights of bondholders or persons  
4250 contracting with the board until the bonds, including interest and other contractual obligations,  
4251 are fully met and discharged.

4252 (ii) Nothing in this chapter precludes an alteration, impairment, or limitation if  
4253 provision is made by law for the protection of bondholders or persons entering into contracts  
4254 with the board.

4255 (2) The board shall pledge all or any part of the revenues to the payment of principal of  
4256 and interest on the bonds.

4257 (3) In order to secure the prompt payment of principal and interest and the proper  
4258 application of the revenues pledged, the board may, by appropriate provisions in the resolution  
4259 authorizing the bonds:

4260 (a) covenant as to the use and disposition of the proceeds of the sale of the bonds;

4261 (b) covenant as to the operation of the building and the collection and disposition of  
4262 the revenues derived from the operation;

4263 (c) collect student building fees from all students, and pledge the fees to the payment of  
4264 building bonds;

4265 (d) covenant as to the rights, liabilities, powers, and duties arising from the breach of  
4266 any covenant or agreement into which it may enter in authorizing and issuing the bonds;

4267 (e) covenant and agree to carry insurance on the building, and its use and occupancy,  
4268 and provide that the cost of any insurance is part of the expense of operating the building;

4269 (f) vest in a trustee:

4270 (i) the right to receive all or any part of the income and revenues pledged and assigned  
4271 to or for the benefit of the holder or holders of the bonds issued under this chapter, and to hold,  
4272 apply, and dispose of the income and revenue; and

4273 (ii) the right to:

4274 (A) enforce any covenant made to secure the bonds;

4275 (B) execute and deliver a trust agreement which sets forth the powers and duties and  
4276 the remedies available to the trustee and limits the trustee's liabilities; and

4277 (C) prescribe the terms and conditions upon which the trustee or the holders of the  
4278 bonds in any specified amount or percentage may exercise such rights and enforce any or all  
4279 covenants and resort to any appropriate remedies;

4280 (g) (i) fix rents, charges, and fees, including student building fees, to be imposed in  
4281 connection with and for the use of the building and its facilities, which are:

4282 (A) income and revenues derived from the operation of the building; and

4283 (B) expressly required to be fully sufficient either by themselves or with land grant  
4284 interest and net profits from proprietary activities, or from sources other than by appropriations  
4285 by the Legislature to such issuing institutions to assure the prompt payment of principal of and  
4286 interest on the bonds as each becomes due; and

4287 (ii) make and enforce rules with reference to the use of the building and with reference  
4288 to requiring any class or classes of students to use the building as desirable for the welfare of  
4289 the institution and its students or for the accomplishment of the purposes of this chapter;

4290 (h) covenant to maintain a maximum percentage of occupancy of the building;

4291 (i) covenant against the issuance of any other obligations payable from the revenues to  
4292 be derived from the building, unless subordinated;

4293 (j) make provision for refunding;

4294 (k) covenant as to the use and disposition of sources of revenue other than those  
4295 derived from appropriations by the Legislature, and pledge those sources of revenues to the  
4296 payment of bonds issued under this chapter;

4297 (l) make other covenants considered necessary or advisable to effect the purposes of  
4298 this chapter; and

4299 (m) delegate to the chair, vice-chair, or chair of the Budget and Finance Subcommittee  
4300 the authority:

4301 (i) to approve any changes with respect to interest rate, price, amount, redemption  
4302 features, and other terms of the bonds as are within reasonable parameters set forth in the  
4303 resolution; and

4304 (ii) to approve and execute all documents relating to the issuance of the bonds.

4305 (4) (a) The agreements and covenants entered into by the board under this section are

4306 binding in all respects upon the board and its officials, agents, and employees, and upon its  
4307 successors.

4308 (b) They are enforceable by appropriate action or suit at law or in equity brought by  
4309 any holder or holders of bonds issued under this chapter.

4310 Section 89. Section **54-7-13.6** is amended to read:

4311 **54-7-13.6. Low-income assistance program.**

4312 (1) As used in this section, "eligible customer" means an electrical corporation or a gas  
4313 corporation customer:

4314 (a) that earns no more than:

4315 (i) 125% of the federal poverty level; or

4316 (ii) another percentage of the federal poverty level as determined by the commission by  
4317 order; and

4318 (b) whose eligibility is certified by the Utah Department of Community and Culture.

4319 (2) A customer's income eligibility for the program described in this section shall be  
4320 renewed annually.

4321 (3) An eligible customer may not receive assistance at more than one residential  
4322 location at any one time.

4323 (4) Notwithstanding Section 54-3-8, the commission may approve a low-income  
4324 assistance program to provide bill payment assistance to low-income residential customers of:

4325 (a) an electrical corporation with more than 50,000 customers; or

4326 (b) a gas corporation with more than 50,000 customers.

4327 (5) (a) (i) Subject to Subsection (5)(a)(ii), low-income assistance program funding  
4328 from each rate class may be in an amount determined by the commission.

4329 (ii) Low-income assistance program funding described in Subsection (5)(a)(i) may not  
4330 exceed 0.5% of the rate class's retail revenues.

4331 (b) (i) Low-income assistance program funding for bill payment assistance shall be  
4332 provided through a surcharge on the monthly bill of each Utah retail customer of the electrical  
4333 corporation or gas corporation providing the program.

4334 (ii) The surcharge described in Subsection (5)(b)(i) may not be collected from  
4335 customers currently participating in the low-income assistance program.

4336 (c) (i) Subject to Subsection (5)(c)(ii), the monthly surcharge described in Subsection

4337 (5)(b)(i) shall be calculated as an equal percentage of revenues from all rate schedules.

4338 (ii) The monthly surcharge described in Subsection (5)(b)(i) may not exceed \$50 per  
4339 month for any customer, adjusted periodically as the commission determines appropriate for  
4340 inflation.

4341 (6) (a) An eligible customer shall receive a billing credit on the monthly electric or gas  
4342 bill for the customer's residence.

4343 (b) The amount of the billing credit described in Subsection (6)(a) shall be determined  
4344 by the commission based on:

4345 (i) the projected funding of the low-income assistance program;

4346 (ii) the projected customer participation in the low-income assistance program; and

4347 (iii) other factors that the commission determines relevant.

4348 (c) The monthly billing credit and the monthly surcharge shall be adjusted concurrently  
4349 with the final order in a general rate increase or decrease case under Section 54-7-12 for the  
4350 electrical corporation or gas corporation providing the program or as determined by the  
4351 commission.

4352 Section 90. Section **54-8b-13** is amended to read:

4353 **54-8b-13. Rules governing operator assisted services.**

4354 (1) The commission shall make rules to implement the following requirements  
4355 pertaining to the provision of operator assisted services:

4356 (a) Rates, surcharges, terms, or conditions for operator assisted services shall be  
4357 provided to customers upon request without charge.

4358 (b) A customer shall be made aware, prior to incurring any charges, of the identity of  
4359 the operator service provider handling the operator assisted call by a form of signage placed on  
4360 or near the telephone or by verbal identification by the operator service provider.

4361 (c) Any contract between an operator service provider and an aggregator shall contain  
4362 language which assures that any person making a telephone call on any telephone owned or  
4363 controlled by the aggregator or operator service provider can access:

4364 (i) where technically feasible, any other operator service provider operating in the  
4365 relevant geographic area; and

4366 (ii) the public safety emergency telephone numbers for the jurisdiction where the  
4367 aggregator's telephone service is geographically located.

(d) No operator service provider shall transfer a call to another operator service provider unless that transfer is accomplished at, and billed from, the call's place of origin. If such a transfer is not technically possible, the operator service provider shall inform the caller that the call cannot be transferred as requested and that the caller should hang up and attempt to reach another operator service provider through the means provided by that other operator service provider.

(2) (a) The Division of Public Utilities shall be responsible for enforcing any rule adopted by the commission under this section.

(b) If the Division of Public Utilities determines that any person, or any officer or employee of any person, is violating any rule adopted under this section, the division shall serve written notice upon the alleged violator which:

(i) specifies the violation;

(ii) alleges the facts constituting the violation; and

(iii) specifies the corrective action to be taken.

(c) After serving notice as required in Subsection (2)(b), the division may request the commission to issue an order to show cause. After a hearing, the commission may impose penalties and, if necessary, may request the attorney general to enforce the order in district court.

(3) (a) Any person who violates any rule made under this section or fails to comply with any order issued pursuant to this section is subject to a penalty not to exceed \$2,000 per violation.

(b) In the case of a continuing violation, each day that the violation continues constitutes a separate and distinct offense.

(4) A penalty assessment under this section does not relieve the person assessed from civil liability for claims arising out of any act which was a violation of any rule under this section.

Section 91. Section **56-1-18.5** is amended to read:

**56-1-18.5. Railroad property -- Duty of care.**

(1) A person may not ride or climb or attempt to ride or climb on, off, under, over, or across a railroad locomotive, car, or train.

(2) A person may not walk, ride, or travel across, along, or upon railroad yards, tracks,

4399 bridges, or active rights-of-way at any location other than public crossings.

4400 (3) A person may not intentionally obstruct or interfere with train operations or use  
4401 railroad property for recreational purposes.

4402 (4) (a) Except as provided under Subsection (4)(b), an owner or operator of a railroad,  
4403 including its officers, agents, and employees, owes no duty of care to keep railroad yards,  
4404 tracks, bridges, or active rights-of-way safe for entry for any person violating this section.

4405 (b) The owner or operator of a railroad may not intentionally, willfully, or maliciously  
4406 injure a person if the owner or operator has actual knowledge of the person's presence on the  
4407 property.

4408 (5) This section does not apply to a railroad employee, business invitee, or other person  
4409 with express written or oral authorization to enter upon railroad property by the owner or  
4410 operator of the railroad.

4411 (6) This section does not modify any rights or duties of federal, state, county, or  
4412 municipal officials in the performance of their duties.

4413 Section 92. Section **57-11-7** is amended to read:

4414 **57-11-7. Public offering statement -- Contents -- Restrictions on use -- Alteration**  
4415 **or amendments.**

4416 (1) Every public offering statement shall disclose completely and accurately to  
4417 prospective purchasers:

4418 (a) the physical characteristics of the subdivided lands offered; and

4419 (b) unusual and material circumstances or features affecting the subdivided lands.

4420 (2) The proposed public offering statement submitted to the division shall be in a form  
4421 prescribed by its rules and, unless otherwise provided by the division, shall include the  
4422 following:

4423 (a) the name and principal address of the subdivider and the name and principal  
4424 address of each officer, director, general partner, other principal, or person occupying a similar  
4425 status or performing similar functions as defined by the rules of the division if the subdivider is  
4426 a person other than an individual;

4427 (b) a general description of the subdivided lands stating the total number of units in the  
4428 offering;

4429 (c) a statement summarizing in one place the significant terms of any encumbrances,

4430 easements, liens, severed interests, and restrictions, including zoning and other regulations  
4431 affecting the subdivided lands and each unit, and a statement of all existing or proposed taxes  
4432 or special assessments which affect the subdivided lands;  
4433 (d) a statement of the use for which the property is offered;  
4434 (e) information concerning:  
4435 (i) any improvements, including streets, curbs, and gutters, sidewalks, water supply  
4436 including a supply of culinary water, drainage and flood control systems, irrigation systems,  
4437 sewage disposal facilities, and customary utilities;  
4438 (ii) the estimated cost to the purchaser, the estimated date of completion, and the  
4439 responsibility for construction and maintenance of existing and proposed improvements which  
4440 are referred to in connection with the offering or disposition; and  
4441 (iii) if for any reason any of the improvements described in Subsections (2)(e)(i) and  
4442 (ii) cannot presently be constructed or maintained, a statement clearly setting forth this fact and  
4443 giving the reasons therefor;  
4444 (f) (i) a statement of existing zoning or other planned land use designation of each unit  
4445 and the proposed use of each unit in the subdivision including uses as residential dwellings,  
4446 agriculture, churches, schools, low density apartments, high density apartments and hotels, and  
4447 a subdivision map showing the proposed use, the zoning, or other planned land use  
4448 designation, unless each unit has the same proposed use, zoning, or other planned land use  
4449 designation;  
4450 (ii) if the subdivision consists of more than one tract or other smaller division, the  
4451 information and map required by Subsection (2)(f)(i) need only pertain to the tract or smaller  
4452 division in which the units offered for disposition are located;  
4453 (g) a map, which need not be drawn to scale, enabling one unfamiliar with the area in  
4454 which the subdivision is located to reach the subdivision by road or other thoroughfare from a  
4455 nearby town or city;  
4456 (h) (i) the boundary, course, dimensions, and intended use of the right-of-way and  
4457 easement grants of record;  
4458 (ii) the location of existing underground and utility facilities; and  
4459 (iii) any conditions or restrictions governing the location of the facilities within the  
4460 right-of-way, and easement grants of record, and utility facilities within the subdivision; and

4461 (i) any additional information the division may require to assure full and fair disclosure  
4462 to prospective purchasers.

4463 (3) (a) The public offering statement may not be used for any promotional purposes  
4464 either before registration of the subdivided lands or before the date the statement becomes  
4465 effective.

4466 (b) The statement may be used after it becomes effective only if it is used in its  
4467 entirety.

4468 (c) A person may not advertise or represent that the division approves or recommends  
4469 the subdivided lands or their disposition.

4470 (d) No portion of the public offering statement may be underscored, italicized, or  
4471 printed in larger, heavier, or different color type than the remainder of the statement, unless the  
4472 division requires it.

4473 (4) (a) The division may require the subdivider to alter or amend the proposed public  
4474 offering statement in order to assure full and fair disclosure to prospective purchasers.

4475 (b) A change in the substance of the promotional plan or plan of disposition or  
4476 development of the subdivision may not be made after registration without notifying and  
4477 receiving approval of the division and without making appropriate amendment of the public  
4478 offering statement.

4479 (c) A public offering statement is not current unless:

4480 (i) all amendments are incorporated;

4481 (ii) the subdivider has timely filed each renewal report required by Section 57-11-10;  
4482 and

4483 (iii) no cease and desist order issued pursuant to this chapter is in effect.

4484 (5) The subdivider must notify the division within five working days if he is convicted  
4485 of a crime involving fraud, deception, false pretenses, misrepresentation, false advertising, or  
4486 dishonest dealing in real estate transactions, or has been subject to any injunction or  
4487 administrative order restraining a false or misleading promotional plan involving land  
4488 dispositions.

4489 (6) The subdivider must notify the division within five working days if the person  
4490 which owns the subdivided lands files a petition in bankruptcy or if any other event occurs  
4491 which may have a material adverse effect on the subdivision.

Section 93. Section **58-1-201** is amended to read:

**58-1-201. Boards -- Appointment -- Membership -- Terms -- Vacancies -- Quorum -- Per diem and expenses -- Chair -- Financial interest or faculty position in professional school teaching continuing education prohibited.**

(1) (a) The executive director shall appoint the members of the boards established under this title. In appointing these members the executive director shall give consideration to recommendations by members of the respective occupations and professions and by their organizations.

(b) Each board shall be composed of five members, four of whom shall be licensed or certified practitioners in good standing of the occupation or profession the board represents, and one of whom shall be a member of the general public, unless otherwise provided under the specific licensing chapter.

(c) The names of all persons appointed to boards shall be submitted to the governor for confirmation or rejection. If an appointee is rejected by the governor, the executive director shall appoint another person in the same manner as set forth in Subsection (1)(a).

(2) (a) Except as required by Subsection (2)(b), as terms of current board members expire, the executive director shall appoint each new member or reappointed member to a four-year term.

(b) Notwithstanding the requirements of Subsection (2)(a), the executive director shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.

(c) A board member may not serve more than two consecutive terms, and a board member who ceases to serve on a board may not serve again on that board until after the expiration of a two-year period beginning from that cessation of service.

(d) (i) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(ii) After filling that term, the replacement member may be appointed for only one additional full term.

(e) If a board member fails or refuses to fulfill the responsibilities and duties of a board member, including the attendance at board meetings, the executive director with the approval

4523 of the board may remove the board member and replace the member in accordance with this  
4524 section.

4525 (3) A majority of the board members constitutes a quorum. A quorum is sufficient  
4526 authority for the board to act.

4527 (4) (a) (i) Members who are not government employees shall receive no compensation  
4528 or benefits for their services, but may receive per diem and expenses incurred in the  
4529 performance of the member's official duties at the rates established by the Division of Finance  
4530 under Sections 63A-3-106 and 63A-3-107.

4531 (ii) Members may decline to receive per diem and expenses for their service.

4532 (b) (i) State government officer and employee members who do not receive salary, per  
4533 diem, or expenses from their agency for their service may receive per diem and expenses  
4534 incurred in the performance of their official duties from the board at the rates established by the  
4535 Division of Finance under Sections 63A-3-106 and 63A-3-107.

4536 (ii) State government officer and employee members may decline to receive per diem  
4537 and expenses for their service.

4538 (5) Each board shall annually designate one of its members to serve as chair for a  
4539 one-year period.

4540 (6) A board member may not be a member of the faculty of or have any financial  
4541 interest in any vocational or professional college or school which provides continuing  
4542 education to any licensee if that continuing education is required by statute or rule.

4543 Section 94. Section **58-41-4** is amended to read:

4544 **58-41-4. Exemptions from chapter.**

4545 (1) In addition to the exemptions from licensure in Section 58-1-307, the following  
4546 persons may engage in the practice of speech-language pathology and audiology subject to the  
4547 stated circumstances and limitations without being licensed under this chapter:

4548 (a) a qualified person licensed in this state under any law existing in this state prior to  
4549 May 13, 1975, from engaging in the profession for which he is licensed;

4550 (b) a medical doctor, physician, or surgeon licensed in this state, from engaging in his  
4551 specialty in the practice of medicine;

4552 (c) a hearing aid dealer or salesman from selling, fitting, adjusting, and repairing  
4553 hearing aids, and conducting hearing tests solely for that purpose. However, a hearing aid

dealer may not conduct audiologic testing on persons under the age of 18 years except under the direct supervision of an audiologist licensed under this chapter;

(d) a person who has obtained a valid and current credential issued by the Utah State Office of Education while performing specifically the functions of a speech-language pathologist or audiologist, in no way in his own interest, solely within the confines of and under the direction and jurisdiction of and only in the academic interest of the schools by which employed in this state;

(e) a person employed as a speech-language pathologist or audiologist by federal government agencies or subdivisions or, prior to July 1, 1989, by state or local government agencies or subdivisions, while specifically performing speech-language pathology or audiology services in no way in his own interest, solely within the confines of and under the direction and jurisdiction of and in the specific interest of that agency or subdivision;

(f) a person identified in Subsections (1)(d) and (e) may offer lectures for a fee, or monetary or other compensation, without being licensed; however, such person may elect to be subject to the requirements of this chapter;

(g) a person employed by accredited colleges or universities as a speech-language pathologist or audiologist from performing the services or functions described in this chapter when they are:

(i) performed solely as an assigned teaching function of employment;

(ii) solely in academic interest and pursuit as a function of that employment;

(iii) in no way for their own interest; and

(iv) provided for no fee, monetary or otherwise, other than their agreed institutional salary;

(h) a person pursuing a course of study leading to a degree in speech-language pathology or audiology while enrolled in an accredited college or university, provided those activities constitute an assigned, directed, and supervised part of his curricular study, and in no other interest, and that all examinations, tests, histories, charts, progress notes, reports, correspondence, and all documents and records which he produces be identified clearly as having been conducted and prepared by a student in training and that such a person is obviously identified and designated by appropriate title clearly indicating the training status and provided that he does not hold himself out directly or indirectly as being qualified to

4585 practice independently;

4586 (i) a person trained in elementary audiometry and qualified to perform basic  
4587 audiometric tests while employed by a licensed medical doctor to perform solely for him while  
4588 under his direct supervision, the elementary conventional audiometric tests of air conduction  
4589 screening, air conduction threshold testing, and tympanometry;

4590 (j) a person while performing as a speech-language pathologist or audiologist for the  
4591 purpose of obtaining required professional experience under the provisions of this chapter, if he  
4592 meets all training requirements and is professionally responsible to and under the supervision  
4593 of a speech-language pathologist or audiologist who holds the CCC or a state license in  
4594 speech-language pathology or audiology. This provision is applicable only during the time that  
4595 person is obtaining the required professional experience;

4596 (k) a corporation, partnership, trust, association, group practice, or like organization  
4597 engaging in speech-language pathology or audiology services without certification or license, if  
4598 it acts only through employees or consists only of persons who are licensed under this chapter;

4599 (l) performance of speech-language pathology or audiology services in this state by a  
4600 speech-language pathologist or audiologist who is not a resident of this state and is not licensed  
4601 under this chapter if those services are performed for no more than one month in any calendar  
4602 year in association with a speech-language pathologist or audiologist licensed under this  
4603 chapter, and if that person meets the qualifications and requirements for application for  
4604 licensure described in Section 58-41-5; and

4605 (m) a person certified under Title 53A, State System of Public Education, as a teacher  
4606 of the deaf, from providing the services or performing the functions he is certified to perform.

4607 (2) No person is exempt from the requirements of this chapter who performs or  
4608 provides any services as a speech-language pathologist or audiologist for which a fee, salary,  
4609 bonus, gratuity, or compensation of any kind paid by the recipient of the service; or who  
4610 engages any part of his professional work for a fee practicing in conjunction with, by  
4611 permission of, or apart from his position of employment as speech-language pathologist or  
4612 audiologist in any branch or subdivision of local, state, or federal government or as otherwise  
4613 identified in this section.

4614 Section 95. Section **58-54-3** is amended to read:

4615 **58-54-3. Board created -- Membership -- Duties.**

4616 (1) There is created a Radiology Technologist Licensing Board consisting of seven  
4617 members as follows:

- 4618 (a) four licensed radiology technologists;
- 4619 (b) one licensed radiology practical technician;
- 4620 (c) one radiologist; and
- 4621 (d) one member from the general public.

4622 (2) The board shall be appointed in accordance with Section 58-1-201.

4623 (3) The duties and responsibilities of the board shall be in accordance with Sections  
4624 58-1-202 and 58-1-203.

4625 (4) In accordance with Subsection 58-1-203(6), there is established an advisory peer  
4626 committee to the board consisting of eight members broadly representative of the state and  
4627 including:

4628 (a) one licensed physician and surgeon who is not a radiologist and who uses radiology  
4629 equipment in a rural office-based practice, appointed from among recommendations of the  
4630 Physicians Licensing Board;

4631 (b) one licensed physician and surgeon who is not a radiologist and who uses radiology  
4632 equipment in an urban office-based practice, appointed from among recommendations of the  
4633 Physicians Licensing Board;

4634 (c) one licensed physician and surgeon who is a radiologist practicing in radiology,  
4635 appointed from among recommendations of the Physicians Licensing Board;

4636 (d) one licensed osteopathic physician, appointed from among recommendations of the  
4637 Osteopathic Physicians Licensing Board;

4638 (e) one licensed chiropractic physician, appointed from among recommendations of the  
4639 Chiropractors Licensing Board;

4640 (f) one licensed podiatric physician, appointed from among recommendations of the  
4641 Podiatric Physician Board;

4642 (g) one representative of the state agency with primary responsibility for regulation of  
4643 sources of radiation, recommended by that agency; and

4644 (h) one representative of a general acute hospital, as defined in Section 26-21-2, that is  
4645 located in a rural area of the state.

4646 (5) (a) Except as required by Subsection (5)(b), members of the advisory peer

committee shall be appointed to four-year terms by the director in collaboration with the board from among the recommendations.

(b) Notwithstanding the requirements of Subsection (5)(a), the director shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the committee is appointed every two years.

(c) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(6) (a) (i) Members who are not government employees shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) Members may decline to receive per diem and expenses for their service.

(b) (i) State government officer and employee members who do not receive salary, per diem, or expenses from their agency for their service may receive per diem and expenses incurred in the performance of their official duties from the committee at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) State government officer and employee members may decline to receive per diem and expenses for their service.

(7) The duties, responsibilities, and scope of authority of the advisory peer committee are:

(a) to advise the board with respect to the board's fulfillment of its duties, functions, and responsibilities under Sections 58-1-202 and 58-1-203; and

(b) to advise the division with respect to the examination the division is to adopt by rule, by which a radiology practical technician may qualify for licensure under Section 58-54-5.

Section 96. Section **58-57-7** is amended to read:

**58-57-7. Exemptions from licensure.**

(1) (a) For purposes of Subsection (2)(b), "qualified" means an individual who is a registered polysomnographic technologist or a Diplomate certified by the American Board of Sleep Medicine.

(b) For purposes of Subsections (2)(f) and (g), "supervision" means one of the

following will be immediately available for consultation in person or by phone:

(i) a practitioner;

(ii) a respiratory therapist;

(iii) a Diplomate of the American Board of Sleep Medicine; or

(iv) a registered polysomnographic technologist.

(2) In addition to the exemptions from licensure in Section 58-1-307, the following persons may engage in the practice of respiratory therapy subject to the stated circumstances and limitations without being licensed under this chapter:

(a) any person who provides gratuitous care for a member of his immediate family without representing himself as a licensed respiratory care practitioner;

(b) any person who is a licensed or qualified member of another health care profession, if this practice is consistent with the accepted standards of the profession and if the person does not represent himself as a respiratory care practitioner;

(c) any person who serves in the Armed Forces of the United States or any other agency of the federal government and is engaged in the performance of his official duties;

(d) any person who acts under a certification issued pursuant to Title 26, Chapter 8a, Utah Emergency Medical Services System Act, while providing emergency medical services; [and]

(e) any person who delivers, installs, or maintains respiratory related durable medical equipment and who gives instructions regarding the use of that equipment in accordance with Subsections 58-57-2(3) and (6), except that this exemption does not include any clinical evaluation or treatment of the patient;

(f) [(f)] any person who is working in a practitioner's office, acting under supervision; and

~~[(ii) for purposes of this Subsection (2)(f) and Subsection (g), "supervision" means one of the following will be immediately available for consultation in person or by phone:]~~

~~[(A) a practitioner;]~~

~~[(B) a respiratory therapist;]~~

~~[(C) a Diplomate of the American Board of Sleep Medicine; or]~~

~~[(D) a registered polysomnographic technologist; and]~~

(g) a polysomnographic technician or trainee, acting under supervision, as long as they

4709 only administer the following in a sleep lab, sleep center, or sleep facility:

4710 (i) oxygen titration; and

4711 (ii) positive airway pressure that does not include mechanical ventilation.

4712 (3) Nothing in this chapter permits a respiratory care practitioner to engage in the

4713 unauthorized practice of other health disciplines.

4714 Section 97. Section **58-73-401** is amended to read:

4715 **58-73-401. Grounds for denial of license -- Disciplinary proceedings -- Limitation**  
4716 **on division actions.**

4717 (1) Grounds for the following are in accordance with Section 58-1-401:

4718 (a) refusing to issue a license to an applicant;

4719 (b) refusing to renew the license of a licensee;

4720 (c) revoking, suspending, restricting, or placing on probation the license of a licensee;

4721 (d) issuing a public or private reprimand to a licensee; and

4722 (e) issuing a cease and desist order.

4723 (2) If a court of competent jurisdiction determines a chiropractic physician is  
4724 incompetent, mentally incompetent, incapable, or mentally ill, the director shall suspend the  
4725 license of that chiropractic physician, even if an appeal is pending.

4726 (3) (a) If it appears to the board there is reasonable cause to believe a chiropractic  
4727 physician who has not been judicially determined to be incompetent, mentally incompetent,  
4728 incapable, or mentally ill is unable to practice chiropractic with reasonable skill and safety to  
4729 patients by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any  
4730 other substance, or as a result of any mental or physical condition, a petition shall be served  
4731 upon that chiropractic physician for a hearing on the sole issue of the capacity of the  
4732 chiropractic physician to conduct properly the practice of the chiropractic physician.

4733 (b) Every chiropractic physician licensed by this state is considered to have:

4734 (i) agreed to submit to a mental or physical examination upon receipt of a written  
4735 direction given by the division with the approval of the board; and

4736 (ii) waived all objections to the admissibility of the examining chiropractic physician's  
4737 or other practitioner's testimony or examination reports on the ground they constitute a  
4738 privileged communication.

4739 (c) Failure of a chiropractic physician to submit to an examination under Subsection

(3)(b) when directed by the division, unless the failure was due to circumstances beyond his control, constitutes grounds for immediate suspension of the chiropractic physician's license and an order of suspension of the license may be entered by the division without the taking of testimony or the presentation of evidence.

(d) A chiropractic physician whose license is suspended under this section shall, at reasonable intervals, be afforded the opportunity to demonstrate he can resume the competent practice of chiropractic with reasonable skill and safety to patients.

(e) Neither the proceedings of the board nor the action taken by it under this section may be used against a chiropractic physician in any other proceedings.

(4) The terms of revocation, suspension, or probation under this chapter may include:

(a) revoking the license to practice either permanently or with a stated date before which the individual may not apply for licensure;

(b) suspending, limiting, or restricting the license to practice chiropractic for up to five years, including limiting the practice of the person to, or excluding from the person's practice, one or more specific branches of medicine, including any limitation on practice within the specified branches;

(c) requiring the license holder to submit to care, counseling, or treatment by physicians approved by or designated by the board, as a condition for licensure;

(d) requiring the license holder to participate in a program of education prescribed by the board;

(e) requiring the license holder to practice under the direction of a physician designated by the board for a specified period of time; or

(f) other appropriate terms and conditions determined by the division in collaboration with the board to be necessary to protect the public health, safety, or welfare.

Section 98. Section **59-2-1114** is amended to read:

**59-2-1114. Exemption of inventory or other tangible personal property held for sale.**

(1) Tangible personal property present in Utah on the assessment date, at noon, held for sale in the ordinary course of business or for shipping to a final out-of-state destination within 12 months and which constitutes the inventory of any retailer, wholesaler, distributor, processor, warehouseman, manufacturer, producer, gatherer, transporter, storage provider,

4771 farmer, or livestock raiser, is exempt from property taxation.  
4772 (2) This exemption does not apply to:  
4773 (a) inventory which is not otherwise subject to personal property taxation;  
4774 (b) mines;  
4775 (c) natural deposits; or  
4776 (d) a manufactured home or mobile home which is sited at a location where occupancy  
4777 could take place.  
4778 (3) As used in this section:  
4779 (a) "Assessment date" means:  
4780 (i) for tangible personal property and vehicles other than vehicles described in  
4781 Subsection (3)(a)(ii), January 1; and  
4782 (ii) for vehicles brought into Utah from out-of-state, the date the vehicles are brought  
4783 into Utah.  
4784 (b) "Inventory" means all items of tangible personal property described as materials,  
4785 containers, goods in process, finished goods, severed minerals, and other personal property  
4786 owned by or in possession of the person claiming the exemption.  
4787 (c) (i) "Mine" means a natural deposit of either metalliferous or nonmetalliferous  
4788 valuable mineral.  
4789 (ii) "Mine" does not mean a severed mineral.  
4790 (d) "Natural deposit" means a metalliferous or nonmetalliferous mineral located at or  
4791 below ground level that has not been severed or extracted from its natural state.  
4792 (e) "Severed mineral" means any mineral that has been previously severed or extracted  
4793 from a natural deposit including severed or extracted minerals that:  
4794 (i) are stored above, below, or within the ground; and  
4795 (ii) are ultimately recoverable for future sale.  
4796 (4) The commission may adopt rules to implement the inventory exemption.  
4797 Section 99. Section **59-10-503** is amended to read:  
4798 **59-10-503. Returns by husband and wife.**  
4799 (1) A husband and wife may make a single return jointly with respect to the tax  
4800 imposed by this chapter even though one of the spouses has neither gross income nor  
4801 deductions, except as follows:

(a) No joint return shall be made if the husband and wife are not permitted to file a joint return for federal income tax purposes.

(b) If the federal income tax liability of husband or wife is determined on a separate return for federal income tax purposes, the income tax liability of each spouse shall be determined on a separate return under this chapter.

(c) If the federal income tax liabilities of husband and wife, other than a husband and wife described in Subsection (1)(b), are determined on a joint federal return, they shall file a joint return under this chapter and their tax liability shall be joint and several.

(d) If neither spouse is required to file a federal income tax return and either or both are required to file an income tax return under this chapter, they may elect to file separate or joint returns and their tax liability shall be several or joint and several, in accordance with the election made.

(2) If either husband or wife is a resident and the other is a nonresident, they shall file separate income tax returns in this state on such forms as may be required by the commission, in which event their tax liability shall be several. They may elect to determine their joint taxable income as if both were residents, in which event their tax liability shall be joint and several.

Section 100. Section **59-10-517** is amended to read:

**59-10-517. Timely mailing treated as timely filing and paying.**

(1) (a) If any return, claim, statement, or other document required to be filed, or any payment required to be made, within a prescribed period or on or before a prescribed date under authority of any provision of this chapter is, after such period or such date, delivered by United States mail to the agency, officer, or office with which such return, claim, statement, or other document is required to be filed, or to which such payment is required to be made, the date of the United States postmark stamped on the cover in which such return, claim, statement, or other document, or payment, is mailed shall be deemed to be the date of delivery or the date of payment, as the case may be.

(b) Subsection (1)(a) shall apply only if:

(i) the postmark date falls within the prescribed period or on or before the prescribed date;

(A) for the filing (including any extension granted for such filing) of the return, claim,

4833 statement, or other document[;]; or

4834 (B) for making the payment (including any extension granted for making such  
4835 payment); and

4836 (ii) the return, claim, statement, or other document, or payment, was, within the time  
4837 prescribed in Subsection (1)(b)(i), deposited in the mail in the United States in an envelope or  
4838 other appropriate wrapper, postage prepaid, properly addressed to the agency, officer, or office  
4839 with which the return, claim, statement, or other document is required to be filed, or to which  
4840 such payment is required to be made.

4841 (2) This section shall apply in the case of postmarks not made by the United States post  
4842 office only if and to the extent provided by rules prescribed by the commission.

4843 (3) (a) For purposes of this section, if any such return, claim, statement, or other  
4844 document, or payment, is sent by United States registered mail:

4845 (i) such registration shall be prima facie evidence that the return, claim, statement, or  
4846 other document was delivered to the agency, officer, or office to which addressed; and

4847 (ii) the date of registration shall be deemed the postmark date.

4848 (b) The commission may provide by rule the extent to which the provisions of  
4849 Subsection (3)(a) with respect to prima facie evidence of delivery and the postmark date shall  
4850 apply to certified mail.

4851 (4) This section does not apply with respect to currency or other medium of payment  
4852 unless actually received and accounted for.

4853 (5) (a) If any deposit required to be made on or before a prescribed date is, after such  
4854 date, delivered by the United States mail to the commission, such deposit shall be deemed  
4855 received by the commission on the date the deposit was mailed.

4856 (b) Subsection (5)(a) applies only if the person required to make the deposit establishes  
4857 that:

4858 (i) the date of mailing falls on or before the second day before the prescribed date for  
4859 making the deposit (including any extension of time granted for making the deposit); and

4860 (ii) the deposit was, on or before such second day, mailed in the United States in an  
4861 envelope or other appropriate wrapper, postage prepaid, properly addressed to the commission.

4862 Section 101. Section **59-11-114** is amended to read:

4863 **59-11-114. Confidentiality of information.**

(1) The confidentiality of returns and other information filed with the commission shall be governed by Section 59-1-403, except that, by rule, the commission may authorize the return of an estate to be open to inspection by or disclosure to:

(a) the personal representative of the estate;

(b) any heir at law, next of kin, or beneficiary under the will of the decedent, but only if the commission finds that this heir at law, next of kin, or beneficiary has a material interest which will be affected by information contained in the return; or

(c) the attorney for the estate or its personal representative or the attorney-in-fact duly authorized in writing by any of the persons described in Subsection (1)(a) or (b).

(2) Reports and returns shall be preserved as provided in Section 59-1-403.

(3) Any person who violates Subsection (1) is subject to the penalty provided in Section 59-1-403.

Section 102. Section **61-1-10** is amended to read:

**61-1-10. Registration by qualification.**

(1) Application may be made to register any security by qualification.

(2) A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in Subsection 61-1-11(3) and the consent to service of process required by Section 61-1-26:

(a) with respect to the issuer and any significant subsidiary:

(i) its name, address, and form of organization;

(ii) the state or foreign jurisdiction and date of its organization;

(iii) the general character and location of its business;

(iv) a description of its physical properties and equipment; and

(v) a statement of the general competitive conditions in the industry or business in which it is or will be engaged;

(b) with respect to every director and officer of the issuer or person occupying a similar status or performing similar functions:

(i) his name, address, and principal occupation for the past five years;

(ii) the amount of securities of the issuer held by him as of a specified date within 30 days of the filing of the registration statement;

(iii) the amount of the securities covered by the registration statement to which he has

4895 indicated his intention to subscribe; and

4896 (iv) a description of any material interest in any material transaction with the issuer or  
4897 any significant subsidiary affected within the past three years or proposed to be affected;

4898 (c) with respect to persons covered by Subsection (2)(b), the remuneration paid during  
4899 the past 12 months and estimated to be paid during the next 12 months, directly or indirectly,  
4900 by the issuer, together with all predecessors, parents, subsidiaries, and affiliates, to all those  
4901 persons in the aggregate;

4902 (d) with respect to any person owning of record, or beneficially if known, 10% or more  
4903 of the outstanding shares of any class of equity security of the issuer, the information specified  
4904 in Subsection (2)(b) other than the person's occupation;

4905 (e) with respect to every promoter if the issuer was organized within the past three  
4906 years, the information specified in Subsection (2)(b), any amount paid to the promoter within  
4907 that period or intended to be paid to the promoter, and the consideration for any such payment;

4908 (f) with respect to any person on whose behalf any part of the offering is to be made in  
4909 a nonissuer distribution:

4910 (i) the person's name and address;

4911 (ii) the amount of securities of the issuer held by the person as of the date of filing of  
4912 the registration statement;

4913 (iii) a description of any material interest in any material transaction with the issuer or  
4914 any significant subsidiary effected within the past three years or proposed to be effected; and

4915 (iv) a statement of the person's reasons for making the offering;

4916 (g) the capitalization and long-term debt, on both a current and pro forma basis, of the  
4917 issuer and any significant subsidiary, including a description of each security outstanding or  
4918 being registered or otherwise offered, and a statement of the amount and kind of consideration,  
4919 whether in the form of cash, physical assets, services, patents, goodwill, or anything else, for  
4920 which the issuer or any subsidiary has issued any of its securities within the past two years or is  
4921 obligated to issue any of its securities;

4922 (h) (i) the kind and amount of securities to be offered;

4923 (ii) the proposed offering price or the method by which it is to be computed;

4924 (iii) any variation therefrom at which any proportion of the offering is to be made to  
4925 any person or class of persons other than the underwriters, with a specification of any such

4926 person or class;

4927 (iv) the basis upon which the offering is to be made if otherwise than for cash;

4928 (v) the estimated aggregate underwriting and selling discounts or commissions and

4929 finders' fees, including separately cash, securities, contracts, or anything else of value to accrue

4930 to the underwriters or finders in connection with the offering, or, if the selling discounts or

4931 commissions are variable, the basis of determining them and their maximum and minimum

4932 amounts;

4933 (vi) the estimated amounts of other selling expenses, including legal, engineering, and

4934 accounting charges;

4935 (vii) the name and address of every underwriter and every recipient of a finder's fee;

4936 (viii) a copy of any underwriting or selling-group agreement under which the

4937 distribution is to be made, or the proposed form of any such agreement whose terms have not

4938 yet been determined; and

4939 (ix) a description of the plan of distribution of any securities which are to be offered

4940 otherwise than through an underwriter;

4941 (i) (i) the estimated cash proceeds to be received by the issuer from the offering;

4942 (ii) the purposes for which the proceeds are to be used by the issuer;

4943 (iii) the amount to be used for each purpose;

4944 (iv) the order or priority in which the proceeds will be used for the purposes stated;

4945 (v) the amounts of any funds to be raised from other sources to achieve the purposes

4946 stated; the sources of any such funds; and

4947 (vi) if any part of the proceeds is to be used to acquire any property, including

4948 goodwill, otherwise than in the ordinary course of business, the names and addresses of the

4949 vendors, the purchase price, the names of any persons who have received commissions in

4950 connection with the acquisition, and the amounts of any such commissions and any other

4951 expense in connection with the acquisition, including the cost of borrowing money to finance

4952 the acquisition;

4953 (j) a description of any stock options or other security options outstanding, or to be

4954 created in connection with the offering, together with the amount of any such option held or to

4955 be held by every person required to be named in ~~[clause]~~ Subsection (2)(b), (d), (e), (f), or (h)

4956 and by any person who holds or will hold 10% or more in the aggregate of any such options;

(k) (i) the dates of, parties to, and general effect concisely stated of, every management or other material contract made or to be made otherwise than in the ordinary course of business if it is to be performed in whole or in part at or after the filing of the registration statement or was made within the past two years, together with a copy of every such contract; and

(ii) a description of any pending litigation or proceeding to which the issuer is a party and which materially affects its business or assets, including any such litigation or proceeding known to be contemplated by governmental authorities;

(l) a copy of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date to be used in connection with the offering;

(m) (i) a specimen copy of the security being registered;

(ii) a copy of the issuer's articles of incorporation, and bylaws, if any, or their substantial equivalents, as currently in effect; and

(iii) a copy of any indenture or other instrument covering the security to be registered;

(n) a signed or conformed copy of an opinion of counsel as to the legality of the security being registered, with an English translation if it is in a foreign language, which shall state whether the security when sold will be legally issued, fully paid, and nonassessable, and if a debt security, a binding obligation of the issuer;

(o) the written consent of any accountant, engineer, appraiser, or other person whose profession gives authority to a statement made by him, if that person is named as having prepared or certified a report or valuation, other than a public and official document or statement, which is used in connection with the registration statement;

(p) (i) a balance sheet of the issuer as of a date within four months prior to the filing of the registration statement;

(ii) a profit and loss statement and analysis of retained earnings for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessors' existence if less than three years; and

(iii) if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required if that business were the registrant; and

(q) such additional information or verification of any statement as the division requires

4988 by rule or order.

4989 (3) A registration statement under this section becomes effective when the division so  
4990 orders.

4991 (4) As a condition of registration under this section, a prospectus containing the  
4992 information, but not containing copies of contracts or agreements specified in Subsections  
4993 (2)(a)[~~(b), (c), (d), (e), (f), (g), (h), (i), (j), (k),~~] through (k) and (p) shall be sent or given to  
4994 each person to whom an offer is made before or concurrently with:

4995 (a) the first written offer made to the person, otherwise than by means of a public  
4996 advertisement, by or for the account of the issuer or any other person on whose behalf the  
4997 offering is being made, or by any underwriter or broker-dealer who is offering part of an unsold  
4998 allotment or subscription taken by the person as a participant in the distribution;

4999 (b) the confirmation of any sale made by or for the account of any such person;

5000 (c) payment pursuant to any such sale; or

5001 (d) delivery of the security pursuant to any such sale, whichever occurs first.

5002 Section 103. Section **62A-3-206** is amended to read:

5003 **62A-3-206. Investigation of complaints -- Procedures.**

5004 (1) (a) The ombudsman shall investigate each complaint he receives. An investigation  
5005 may consist of a referral to another public agency, the collecting of facts and information over  
5006 the telephone, or an inspection of the long-term care facility that is named in the complaint.

5007 (b) The ombudsman shall notify any complainant of its decision to not pursue  
5008 investigation of a complaint after the initial investigation and the reasons for the decision.

5009 (2) In making any investigation, the ombudsman may engage in actions it deems  
5010 appropriate including, but not limited to:

5011 (a) making inquiries and obtaining information;

5012 (b) holding investigatory hearings;

5013 (c) entering upon and inspecting any premises, without notice to the facility, provided  
5014 the investigator identifies himself upon entering the premises as a person authorized by this  
5015 part to inspect the premises; and

5016 (d) inspecting or obtaining any book, file, medical record, or other record required by  
5017 law to be retained by the long-term care facility or governmental agency, pertaining to elderly  
5018 residents, subject to Subsection (3).

(3) (a) Before reviewing a resident's records, the ombudsman shall seek to obtain written permission to review the records from the institutionalized elderly person or his legal representative.

(b) The effort to obtain permission under Subsection (3)(a) shall include personal contact with the elderly resident or his legal representative. If the resident or legal representative refuses to sign a release allowing access to records, the ombudsman shall record and abide by this decision. If the attempt to obtain a signed release fails for any other reason, the ombudsman may review the records.

(4) Following any investigation, the ombudsman shall report its findings and recommendations to the complainant, elderly residents of long-term care facilities affected by the complaint, and to the long-term care facility or governmental agency involved.

Section 104. Section **63A-3-203** is amended to read:

**63A-3-203. Accounting control over state departments and agencies --  
Prescription and approval of financial forms, accounting systems, and fees.**

(1) The director of the Division of Finance shall:

(a) exercise accounting control over all state departments and agencies except institutions of higher education; and

(b) prescribe the manner and method of certifying that funds are available and adequate to meet all contracts and obligations.

(2) The director shall audit all claims against the state for which an appropriation has been made.

(3) (a) The director shall:

(i) prescribe all forms of requisitions, receipts, vouchers, bills, or claims to be used by all state departments and agencies;

(ii) prescribe the forms, procedures, and records to be maintained by all departmental, institutional, or agency store rooms;

(iii) exercise inventory control over the store rooms; and

(iv) prescribe all forms to be used by the division.

(b) Before approving the forms in Subsection (3)(a), the director shall obtain approval from the state auditor that the forms will adequately facilitate the post-audit of public accounts.

(4) Before implementation by any state department or agency, the director of the

5050 Division of Finance shall review and approve:

- 5051 (a) any accounting system developed by a state department or agency; and  
5052 (b) any fees established by any state department or agency to recover the costs of  
5053 operations.

5054 Section 105. Section **63A-4-103** is amended to read:

5055 **63A-4-103. Risk management -- Duties of state agencies.**

5056 (1) (a) Unless specifically authorized by statute to do so, a state agency may not:

- 5057 (i) purchase insurance or self-fund any risk unless authorized by the risk manager; or  
5058 (ii) procure or provide liability insurance for the state.

5059 (b) (i) Notwithstanding the provisions of Subsection (1)(a), the State Board of Regents  
5060 may authorize higher education institutions to purchase insurance for, or self-fund, risks  
5061 associated with their programs and activities that are not covered through the risk manager.

5062 (ii) The State Board of Regents shall provide copies of those purchased policies to the  
5063 risk manager.

5064 (iii) The State Board of Regents shall ensure that the state is named as additional  
5065 insured on any of those policies.

5066 (2) Each state agency shall:

- 5067 (a) comply with reasonable risk related recommendations made by the risk manager;  
5068 (b) participate in risk management training activities conducted or sponsored by the  
5069 risk manager;

5070 (c) include the insurance and liability provisions prescribed by the risk manager in all  
5071 state contracts, together with a statement certifying to the other party to the contract that the  
5072 insurance and liability provisions in the contract are those prescribed by the risk manager;

5073 (d) at each principal design stage, provide written notice to the risk manager that  
5074 construction and major remodeling plans relating to agency buildings and facilities to be  
5075 covered by the fund are available for review, for risk control purposes, and make them  
5076 available to the risk manager for his review and recommendations; and

5077 (e) cooperate fully with requests from the risk manager for agency planning, program,  
5078 or risk related information, and allow the risk manager to attend agency planning and  
5079 management meetings.

5080 (3) Failure to include in the contract the provisions required by Subsection (2)(c) does

5081 not make the contract unenforceable by the state.

5082 Section 106. Section **63A-5-302** is amended to read:

5083 **63A-5-302. Leasing responsibilities of the director.**

5084 (1) The director shall:

5085 (a) lease, in the name of the division, all real property space to be occupied by an  
5086 agency;

5087 (b) in leasing space, comply with:

5088 (i) Title 63G, Chapter 6, Utah Procurement Code; and

5089 (ii) any legislative mandates contained in the appropriations act or other specific  
5090 legislation;

5091 (c) apply the criteria contained in Subsection (1)(e) to prepare a report evaluating each  
5092 high-cost lease at least 12 months before it expires;

5093 (d) evaluate each lease under the division's control and apply the criteria contained in  
5094 Subsection (1)(e), when appropriate, to evaluate those leases;

5095 (e) in evaluating leases:

5096 (i) determine whether or not the lease is cost-effective when the needs of the agency to  
5097 be housed in the leased facilities are considered;

5098 (ii) determine whether or not another option such as construction, use of other  
5099 state-owned space, or a lease-purchase agreement is more cost-effective than leasing;

5100 (iii) determine whether or not the significant lease terms are cost-effective and provide  
5101 the state with sufficient flexibility and protection from liability;

5102 (iv) compare the proposed lease payments to the current market rates, and evaluate  
5103 whether or not the proposed lease payments are reasonable under current market conditions;

5104 (v) compare proposed significant lease terms to the current market, and recommend  
5105 whether or not these proposed terms are reasonable under current market conditions; and

5106 (vi) if applicable, recommend that the lease or modification to a lease be approved or  
5107 disapproved;

5108 (f) based upon the evaluation, include in the report recommendations that identify  
5109 viable alternatives to:

5110 (i) make the lease cost-effective; or

5111 (ii) meet the agency's needs when the lease expires; and

- 5112 (g) upon request, provide the information included in the report to:
- 5113 (i) the agency benefitted by the lease; and
- 5114 (ii) the Office of Legislative Fiscal Analyst.
- 5115 (2) The director may:
- 5116 (a) subject to legislative appropriation, enter into facility leases with terms of up to 10
- 5117 years when the length of the lease's term is economically advantageous to the state; and
- 5118 (b) with the approval of the State Building Board and subject to legislative
- 5119 appropriation, enter into facility leases with terms of more than 10 years when the length of the
- 5120 lease's term is economically advantageous to the state.
- 5121 Section 107. Section **63J-1-602** is amended to read:
- 5122 **63J-1-602. Nonlapsing accounts and funds.**
- 5123 (1) The following revenue collections, appropriations from a fund or account, and
- 5124 appropriations to a program are nonlapsing:
- 5125 (a) appropriations made to the Legislature and its committees;
- 5126 (b) funds collected by the grain grading program, as provided in Section 4-2-2;
- 5127 (c) the Salinity Offset Fund created in Section 4-2-8.5;
- 5128 (d) the Invasive Species Mitigation Fund created in Section 4-2-8.7;
- 5129 (e) funds collected by pesticide dealer license registration fees, as provided in Section
- 5130 4-14-3;
- 5131 (f) funds collected by pesticide applicator business registration fees, as provided in
- 5132 Section 4-14-13;
- 5133 (g) the Rangeland Improvement Fund created in Section 4-20-2;
- 5134 (h) funds deposited as dedicated credits under the Insect Infestation Emergency Control
- 5135 Act, as provided in Section 4-35-6;
- 5136 (i) the Percent-for-Art Program created in Section 9-6-404;
- 5137 (j) the Centennial History Fund created in Section 9-8-604;
- 5138 (k) the Uintah Basin Revitalization Fund, as provided in Section 9-10-108;
- 5139 (l) the Navajo Revitalization Fund created in Section 9-11-104;
- 5140 (m) the LeRay McAllister Critical Land Conservation Program created in Section
- 5141 11-38-301;
- 5142 (n) the Clean Fuels and Vehicle Technology Fund created in Section 19-1-403;

5143 (o) fees deposited as dedicated credits for hazardous waste plan reviews, as provided in  
5144 Section 19-6-120;

5145 (p) an appropriation made to the Division of Wildlife Resources for the appraisal and  
5146 purchase of lands under the Pelican Management Act, as provided in Section 23-21a-6;

5147 (q) award monies under the Crime Reduction Assistance Program, as provided under  
5148 Section 24-1-19;

5149 (r) funds collected from the emergency medical services grant program, as provided in  
5150 Section 26-8a-207;

5151 (s) fees and other funding available to purchase training equipment and to administer  
5152 tests and conduct quality assurance reviews, as provided in Section 26-8a-208;

5153 (t) funds collected as a result of a sanction under Section 1919 of Title XIX of the  
5154 federal Social Security Act, as provided in Section 26-18-3;

5155 (u) the Utah Health Care Workforce Financial Assistance Program created in Section  
5156 26-46-102;

5157 (v) monies collected from subscription fees for publications prepared or distributed by  
5158 the insurance commissioner, as provided in Section 31A-2-208;

5159 (w) monies received by the Insurance Department for administering, investigating  
5160 under, and enforcing the Insurance Fraud Act, as provided in Section 31A-31-108;

5161 (x) certain monies received for penalties paid under the Insurance Fraud Act, as  
5162 provided in Section 31A-31-109;

5163 (y) the fund for operating the state's Federal Health Care Tax Credit Program, as  
5164 provided in Section 31A-38-104;

5165 (z) certain funds in the Department of Workforce Services' program for the education,  
5166 training, and transitional counseling of displaced homemakers, as provided in Section  
5167 35A-3-114;

5168 (aa) the Employment Security Administration Fund created in Section 35A-4-505;

5169 (bb) the Special Administrative Expense Fund created in Section 35A-4-506;

5170 (cc) funding for a new program or agency that is designated as nonlapsing under  
5171 Section 36-24-101;

5172 (dd) the Oil and Gas Conservation Account created in Section 40-6-14.5;

5173 (ee) funds available to the State Tax Commission for purchase and distribution of

5174 license plates and decals, as provided in Section 41-1a-1201;  
5175 (ff) certain fees for the cost of electronic payments under the Motor Vehicle Act, as  
5176 provided in Section 41-1a-1221;  
5177 (gg) certain fees collected for administering and enforcing the Motor Vehicle Business  
5178 Regulation Act, as provided in Section 41-3-601;  
5179 (hh) certain fees for the cost of electronic payments under the Motor Vehicle Business  
5180 Regulation Act, as provided in Section 41-3-604;  
5181 (ii) the Off-Highway Access and Education Restricted Account created in Section  
5182 41-22-19.5;  
5183 (jj) certain fees for the cost of electronic payments under the Motor Vehicle Act, as  
5184 provided in Section 41-22-36;  
5185 (kk) monies collected under the Notaries Public Reform Act, as provided under  
5186 46-1-23;  
5187 (ll) certain funds associated with the Law Enforcement Operations Account, as  
5188 provided in Section 51-9-411;  
5189 (mm) the Public Safety Honoring Heroes Restricted Account created in Section  
5190 53-1-118;  
5191 (nn) funding for the Search and Rescue Financial Assistance Program, as provided in  
5192 Section 53-2-107;  
5193 (oo) appropriations made to the Department of Public Safety from the Department of  
5194 Public Safety Restricted Account, as provided in Section 53-3-106;  
5195 (pp) appropriations to the Motorcycle Rider Education Program, as provided in Section  
5196 53-3-905;  
5197 (qq) fees collected by the State Fire Marshal Division under the Utah Fire Prevention  
5198 and Safety Act, as provided in Section 53-7-314;  
5199 (rr) the DNA Specimen Restricted Account created in Section 53-10-407;  
5200 (ss) the minimum school program, as provided in Section 53A-17a-105;  
5201 (tt) certain funds appropriated from the Uniform School Fund to the State Board of  
5202 Education for new teacher bonus and performance-based compensation plans, as provided in  
5203 Section 53A-17a-148;  
5204 (uu) certain funds appropriated from the Uniform School Fund to the State Board of

5205 Education for implementation of proposals to improve mathematics achievement test scores, as  
5206 provided in Section 53A-17a-152;

5207 (vv) the School Building Revolving Account created in Section 53A-21-401;

5208 (ww) monies received by the State Office of Rehabilitation for the sale of certain  
5209 products or services, as provided in Section 53A-24-105;

5210 (xx) the State Board of Regents, as provided in Section 53B-6-104;

5211 (yy) certain funds appropriated from the General Fund to the State Board of Regents  
5212 for teacher preparation programs, as provided in Section 53B-6-104;

5213 (zz) a certain portion of monies collected for administrative costs under the School  
5214 Institutional Trust Lands Management Act, as provided under Section 53C-3-202;

5215 (aaa) certain surcharges on residence and business telecommunications access lines  
5216 imposed by the Public Service Commission, as provided in Section 54-8b-10;

5217 (bbb) certain fines collected by the Division of Occupational and Professional  
5218 Licensing for violation of unlawful or unprofessional conduct that are used for education and  
5219 enforcement purposes, as provided in Section 58-17b-505;

5220 (ccc) the Nurse Education and Enforcement Fund created in Section 58-31b-103;

5221 (ddd) funding of the controlled substance database, as provided in Section 58-37-7.7;

5222 (eee) the Certified Nurse Midwife Education and Enforcement Fund created in Section  
5223 58-44a-103;

5224 (fff) funding for the building inspector's education program, as provided in Section  
5225 58-56-9;

5226 (ggg) certain fines collected by the Division of Occupational and Professional  
5227 Licensing for use in education and enforcement of the Security Personnel Licensing Act, as  
5228 provided in Section 58-63-103;

5229 (hhh) the Professional Geologist Education and Enforcement Fund created in Section  
5230 58-76-103;

5231 (iii) certain monies in the Water Resources Conservation and Development Fund, as  
5232 provided in Section 59-12-103;

5233 (jjj) funds paid to the Division of Real Estate for the cost of a criminal background  
5234 check for broker and sales agent licenses, as provided in Section 61-2-9;

5235 (kkk) the Utah Housing Opportunity Restricted Account created in Section 61-2-28;

5236 (lll) funds paid to the Division of Real Estate for the cost of a criminal background  
5237 check for a mortgage loan license, as provided in Section 61-2c-202;

5238 (mmm) funds paid to the Division of Real Estate in relation to examination of records  
5239 in an investigation, as provided in Section 61-2c-401;

5240 (nnn) certain funds donated to the Department of Human Services, as provided in  
5241 Section 62A-1-111;

5242 (ooo) certain funds donated to the Division of Child and Family Services, as provided  
5243 in Section 62A-4a-110;

5244 (ppp) the Mental Health Therapist Grant and Scholarship Program, as provided in  
5245 Section 62A-13-109;

5246 (qqq) assessments for DUI violations that are forwarded to an account created by a  
5247 county treasurer, as provided in Section 62A-15-503;

5248 (rrr) appropriations to the Division of Services for People with Disabilities, as provided  
5249 in Section 62A-5-102;

5250 (sss) certain donations to the Division of Substance Abuse and Mental Health, as  
5251 provided in Section 62A-15-103;

5252 (ttt) certain funds received by the Division of Parks and Recreation from the sale or  
5253 disposal of buffalo, as provided under Section 63-11-19.2;

5254 (uuu) revenue for golf user fees at the Wasatch Mountain State Park, Palisades State  
5255 Park, or Jordan River State Park, as provided under Section 63-11-19.5;

5256 (vvv) revenue for golf user fees at the Green River State Park, as provided under  
5257 Section 63-11-19.6;

5258 (www) the Centennial Nonmotorized Paths and Trail Crossings Program created under  
5259 Section 63-11a-503;

5260 (xxx) the Bonneville Shoreline Trail Program created under Section 63-11a-504;

5261 (yyy) the account for the Utah Geological Survey, as provided in Section 63-73-10;

5262 (zzz) the Risk Management Fund created under Section 63A-4-201;

5263 (aaaa) the Child Welfare Parental Defense Fund created in Section 63A-11-203;

5264 (bbbb) the Constitutional Defense Restricted Account created in Section 63C-4-103;

5265 (cccc) a portion of the funds appropriated to the Utah Seismic Safety Commission, as  
5266 provided in Section 63C-6-104;

5267 (dddd) funding for the Medical Education Program administered by the Medical  
5268 Education Council, as provided in Section 63C-8-102;  
5269 (eeee) certain monies payable for commission expenses of the Pete Suazo Utah  
5270 Athletic Commission, as provided under Section 63C-11-301;  
5271 (ffff) funds collected for publishing the Division of Administrative Rules' publications,  
5272 as provided in Section 63G-3-402;  
5273 (gggg) the appropriation to fund the Governor's Office of Economic Development's  
5274 Enterprise Zone Act, as provided in Section 63M-1-416;  
5275 (hhhh) the Tourism Marketing Performance Account, as provided in Section  
5276 63M-1-1406;  
5277 (iiii) certain funding for rural development provided to the Office of Rural  
5278 Development in the Governor's Office of Economic Development, as provided in Section  
5279 63M-1-1604;  
5280 (jjjj) certain monies in the Development for Disadvantaged Rural Communities  
5281 Restricted Account, as provided in Section 63M-1-2003;  
5282 (kkkk) appropriations to the Utah Science Technology and Research Governing  
5283 Authority, created under Section 63M-2-301, as provided under Section 63M-3-302;  
5284 (llll) certain monies in the Rural Broadband Service Fund, as provided in Section  
5285 63M-1-2303;  
5286 (mmmm) funds collected from monthly offender supervision fees, as provided in  
5287 Section 64-13-21.2;  
5288 (nnnn) funds collected by the housing of state probationary inmates or state parole  
5289 inmates, as provided in Subsection 64-13e-104(2);  
5290 (oooo) the Sovereign Lands Management account created in Section 65A-5-1;  
5291 (pppp) certain forestry and fire control funds utilized by the Division of Forestry, Fire,  
5292 and State Lands, as provided in Section 65A-8-103;  
5293 (qqqq) the Department of Human Resource Management user training program, as  
5294 provided in Section 67-19-6;  
5295 (rrrr) funds for the University of Utah Poison Control Center program, as provided in  
5296 Section 69-2-5.5;  
5297 (ssss) appropriations to the Transportation Corridor Preservation Revolving Loan

5298 Fund, as provided in Section 72-2-117;  
5299 (tttt) appropriations to the Local Transportation Corridor Preservation Fund, as  
5300 provided in Section 72-2-117.5;  
5301 (uuuu) appropriations to the Tollway Restricted Special Revenue Fund, as provided in  
5302 Section 77-2-120;  
5303 (vvvv) appropriations to the Aeronautics Construction Revolving Loan Fund, as  
5304 provided in Section 77-2-122;  
5305 (www) appropriations to the State Park Access Highways Improvement Program, as  
5306 provided in Section 72-3-207;  
5307 (xxxx) the Traffic Noise Abatement Program created in Section 72-6-112;  
5308 (yyyy) certain funds received by the Office of the State Engineer for well drilling fines  
5309 or bonds, as provided in Section 73-3-25;  
5310 (zzzz) certain monies appropriated to increase the carrying capacity of the Jordan River  
5311 that are transferred to the Division of Parks and Recreation, as provided in Section 73-10e-1;  
5312 (aaaaa) certain fees for the cost of electronic payments under the State Boating Act, as  
5313 provided in Section 73-18-25;  
5314 (bbbbb) certain monies appropriated from the Water Resources Conservation and  
5315 Development Fund, as provided in Section 73-23-2;  
5316 (ccccc) the Lake Powell Pipeline Project Operation and Maintenance Fund created in  
5317 Section 73-28-404;  
5318 (ddddd) certain funds in the Water Development and Flood Mitigation Reserve  
5319 Account, as provided in Section 73-103-1;  
5320 (eeee) certain funds appropriated for compensation for special prosecutors, as  
5321 provided in Section 77-10a-19;  
5322 (ffff) the Indigent Aggravated Murder Defense Trust Fund created in Section  
5323 77-32-601;  
5324 (ggggg) the Indigent Felony Defense Trust Fund created in Section 77-32-701;  
5325 (hhhhh) funds donated or paid to a juvenile court by private sources, as provided in  
5326 Subsection 78A-6-203(1)(c);  
5327 (iiii) a state rehabilitative employment program, as provided in Section 78A-6-210;  
5328 and

5329 (jjjjj) fees from the issuance and renewal of licenses for certified court interpreters, as  
5330 provided in Section 78B-1-146.

5331 (2) No revenue collection, appropriation from a fund or account, or appropriation to a  
5332 program may be treated as nonlapsing unless:

5333 (a) it is expressly referenced by this section;

5334 (b) it is designated in a condition of appropriation in the appropriations bill; or

5335 (c) nonlapsing authority is granted under Section 63J-1-603.

5336 (3) Each legislative appropriations subcommittee shall review the accounts and funds  
5337 that have been granted nonlapsing authority under this section or Section 63J-1-603.

5338 Section 108. Section **63M-9-301** is amended to read:

5339 **63M-9-301. Local interagency council -- Composition -- Duties.**

5340 (1) Communities shall establish local interagency councils to improve service delivery  
5341 to children and youth at risk, who are experiencing multiple problems and require services  
5342 from more than one agency.

5343 (2) Each local interagency council shall consist of representatives from each agency  
5344 serving children and youth who are at risk and their families within the community.

5345 (a) At a minimum the council shall consist of a family advocate and a local  
5346 representative from the following:

5347 (i) child welfare;

5348 (ii) developmental disabilities;

5349 (iii) education;

5350 (iv) health;

5351 (v) juvenile justice;

5352 (vi) mental health;

5353 (vii) parents;

5354 (viii) substance abuse; and

5355 (ix) youth corrections.

5356 (b) The members of the local interagency council specified in Subsections (2)(a)(i)  
5357 through (ix) shall select three parents from the local community to serve on the local  
5358 interagency council, representative of families with children.

5359 (3) The local interagency council shall:

5360 (a) provide general staffing for individual at risk cases which require services from  
5361 more than one agency;

5362 (b) provide services to meet the needs of individual cases or create new services to fill  
5363 gaps in current service continuum;

5364 (c) develop an individualized and coordinated service plan for each child or youth at  
5365 risk and the child or youth's family; and

5366 (d) establish a case management process to implement individualized and coordinated  
5367 service plans.

5368 (4) Each local interagency council shall integrate into its operational procedures a  
5369 method to involve parents in the staffing and service planning process.

5370 (5) (a) Each local interagency council shall operate in accordance with a written  
5371 agreement entered into by the participating agencies.

5372 (b) The agreement shall include a provision that the participating agencies agree to  
5373 implement the service recommendations in the individualized and coordinated service plan  
5374 when not inconsistent with federal law.

5375 Section 109. Section **67-1-8.1** is amended to read:

5376 **67-1-8.1. Executive Residence Commission -- Recommendations as to restoration**  
5377 **of executive residence.**

5378 (1) The Legislature finds and declares that:

5379 (a) the state property known as the Kearns' mansion, the executive residence, is an  
5380 irreplaceable historic landmark possessing special and unique architectural qualities that should  
5381 be preserved; and

5382 (b) the deterioration that has taken place will continue unless remedial restoration  
5383 measures are undertaken.

5384 (2) (a) An Executive Residence Commission is established to make recommendations  
5385 to the Legislature for the budgeting of renovation, upkeep, historical maintenance, and  
5386 restoration of the executive residence.

5387 (b) The commission shall consist of three private citizens appointed by the governor,  
5388 all of whom have demonstrated an interest in historical preservation.

5389 (c) The commission shall also consist of one assigned representative from the Board of  
5390 the Utah Arts Council, one from the Board of State History, one from the building board, an

5391 interior designer selected by the Utah chapter of ASID, and an architect selected by the Utah  
5392 chapter of the AIA.

5393 (3) (a) Except as required by Subsection (3)(b), as terms of current commission  
5394 members expire, the governor shall appoint each new member or reappointed member to a  
5395 four-year term ending on March 1.

5396 (b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the  
5397 time of appointment or reappointment, adjust the length of terms to ensure that the terms of  
5398 commission members are staggered so that approximately half of the commission is appointed  
5399 every two years.

5400 (4) (a) The governor shall appoint a chair from among the membership of the  
5401 commission.

5402 (b) Five members of the commission shall constitute a quorum, and either the chair or  
5403 two other members of the commission may call meetings of the commission.

5404 (5) When a vacancy occurs in the membership for any reason, the replacement shall be  
5405 appointed for the unexpired term.

5406 (6) (a) (i) Members who are not government employees shall receive no compensation  
5407 or benefits for their services, but may receive per diem and expenses incurred in the  
5408 performance of the member's official duties at the rates established by the Division of Finance  
5409 under Sections 63A-3-106 and 63A-3-107.

5410 (ii) Members may decline to receive per diem and expenses for their service.

5411 (b) (i) State government officer and employee members who do not receive salary, per  
5412 diem, or expenses from their agency for their service may receive per diem and expenses  
5413 incurred in the performance of their official duties from the commission at the rates established  
5414 by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

5415 (ii) State government officer and employee members may decline to receive per diem  
5416 and expenses for their service.

5417 Section 110. Section **67-19a-201** is amended to read:

5418 **67-19a-201. Career Service Review Board created -- Members -- Appointment --**  
5419 **Removal -- Terms -- Organization -- Per diem and expenses.**

5420 (1) There is created a Career Service Review Board.

5421 (2) (a) The governor shall appoint five members to the board no more than three of

5422 which are members of the same political party.

5423 (b) The governor shall appoint members whose gender and ethnicity represent the  
5424 career service work force.

5425 (3) (a) The governor may remove any board member for cause.

5426 (b) When a vacancy occurs in the membership for any reason, the replacement shall be  
5427 appointed for the unexpired term.

5428 (4) The governor shall ensure that appointees to the board:

5429 (a) are qualified by knowledge of employee relations and merit system principles in  
5430 public employment; and

5431 (b) are not:

5432 (i) members of any local, state, or national committee of a political party;

5433 (ii) officers or members of a committee in any partisan political club; and

5434 (iii) holding or a candidate for a paid public office.

5435 (5) (a) Except as required by Subsection (5)(b), the governor shall appoint board  
5436 members to serve four-year terms beginning January 1.

5437 (b) Notwithstanding the requirements of Subsection (5)(a), the governor shall, at the  
5438 time of appointment or reappointment, adjust the length of terms to ensure that the terms of  
5439 board members are staggered so that approximately half of the board is appointed every two  
5440 years.

5441 (c) The members of the board shall serve until their successors are appointed and  
5442 qualified.

5443 (6) Each year, the board shall choose a chair and vice chair from its own members.

5444 (7) (a) Three members of the board are a quorum for the transaction of business.

5445 (b) Action by a majority of members when a quorum is present is action of the board.

5446 (8) (a) Members shall receive no compensation or benefits for their services, but may  
5447 receive per diem and expenses incurred in the performance of the member's official duties at  
5448 the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

5449 (b) Members may decline to receive per diem and expenses for their service.

5450 Section 111. Section **67-21-3** is amended to read:

5451 **67-21-3. Reporting of governmental waste or violations of law -- Employer action**  
5452 **-- Exceptions.**

(1) (a) An employer may not take adverse action against an employee because the employee, or a person authorized to act on behalf of the employee, communicates in good faith the existence of any waste of public funds, property, or manpower, or a violation or suspected violation of a law, rule, or regulation adopted under the law of this state, a political subdivision of this state, or any recognized entity of the United States.

(b) For purposes of Subsection (1)(a), an employee is presumed to have communicated in good faith if he gives written notice or otherwise formally communicates the waste, violation, or reasonable suspicion to the state auditor. This presumption may be rebutted by showing that the employee knew or reasonably ought to have known that the report is malicious, false, or frivolous.

(2) An employer may not take adverse action against an employee because an employee participates or gives information in an investigation, hearing, court proceeding, legislative or other inquiry, or other form of administrative review held by the public body.

(3) An employer may not take adverse action against an employee because the employee has objected to or refused to carry out a directive that the employee reasonably believes violates a law of this state, a political subdivision of this state, or the United States, or a rule or regulation adopted under the authority of the laws of this state, a political subdivision of this state, or the United States.

(4) An employer may not implement rules or policies that unreasonably restrict an employee's ability to document the existence of any waste of public funds, property, or manpower, or a violation or suspected violation of any laws, rules, or regulations.

Section 112. Section **70A-2a-219** is amended to read:

**70A-2a-219. Risk of loss.**

(1) Except in the case of a finance lease, risk of loss is retained by the lessor and does not pass to the lessee. In the case of a finance lease, risk of loss passes to the lessee.

(2) Subject to the provisions of this chapter on the effect of default on risk of loss as provided in Section 70A-2a-220, if risk of loss is to pass to the lessee and the time of passage is not stated, the following rules apply:

(a) If the lease contract requires or authorizes the goods to be shipped by carrier:

(i) and it does not require delivery at a particular destination, the risk of loss passes to the lessee when the goods are duly delivered to the carrier; but

(ii) if it does require delivery at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the lessee when the goods are there duly so tendered as to enable the lessee to take delivery.

(b) If the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the lessee on acknowledgment by the bailee of the lessee's right to possession of the goods.

(c) In any case not within Subsection (2)(a) or (b), the risk of loss passes to the lessee on the lessee's receipt of the goods if the lessor, or, in the case of a finance lease, the supplier, is a merchant; otherwise the risk passes to the lessee on tender of delivery.

Section 113. Section **70A-2a-529** is amended to read:

**70A-2a-529. Lessor's damages for lessee's default.**

(1) After default by the lessee under the lease contract of the type described in Subsection 70A-2a-523(1) or (3)(a), or, if agreed, after any other default by the lessee, if the lessor complies with Subsection (2), the lessor may recover from the lessee as damages:

(a) for goods accepted by the lessee and not repossessed by or tendered back to the lessor and for conforming goods lost or damaged after risk of loss passes to the lessee as provided in Section 70A-2a-219:

(i) accrued and unpaid rent as of the date of entry of judgment in favor of the lessor;

(ii) the present value as of the date determined under Subsection (1)(a)(i) of the rent for the then remaining lease term of the lease agreement; and

(iii) any incidental damages allowed under Section 70A-2a-530, less expenses saved in consequence of the lessee's default; and

(b) for goods identified to the lease contract where the lessor has never delivered the goods or has taken possession of them or the lessee has effectively tendered them back to the lessor, if the lessor is unable after reasonable effort to dispose of them at a reasonable price or the circumstances reasonably indicate that such an effort will be unavailing:

(i) accrued and unpaid rent as of the date of entry of judgment in favor of the lessor;

(ii) the present value as of the date determined under Subsection (1)(b)(i) of the rent for the then remaining lease term of the lease agreement; and

(iii) any incidental damages allowed under Section 70A-2a-530, less expenses saved in consequence of the lessee's default.

(2) Except as provided in Subsection (3), the lessor shall hold for the lessee for the remaining term of the lease agreement any goods that have been identified to the lease contract and are in the lessor's control.

(3) The lessor may dispose of the goods at any time before collection of the judgment for damages obtained pursuant to Subsection (1). If the disposition is before the end of the remaining lease term of the lease agreement, the lessor's recovery against the lessee for damages will be governed by Section 70A-2a-527 or 70A-2a-528, and the lessor will cause an appropriate credit to be provided against any judgment for damages to the extent that the amount of the judgment exceeds the recovery available under Section 70A-2a-527 or 70A-2a-528.

(4) Payment of the judgment for damages obtained pursuant to Subsection (1) entitles the lessee to the use and possession of the goods not then disposed of for the remaining lease term of and in accordance with the lease agreement if the lessee complies with all other terms and conditions of the lease agreement.

(5) After a lessee has wrongfully rejected or revoked acceptance of goods, has failed to pay rent then due, or has repudiated as provided in Section 70A-2a-402, a lessor who is held not entitled to rent under this section must nevertheless be awarded damages for nonacceptance under Sections 70A-2a-527 and 70A-2a-528.

Section 114. Section **70A-3-206** is amended to read:

**70A-3-206. Restrictive indorsement.**

(1) An indorsement limiting payment to a particular person or otherwise prohibiting further transfer or negotiation of the instrument is not effective to prevent further transfer or negotiation of the instrument.

(2) An indorsement stating a condition to the right of the indorsee to receive payment does not affect the right of the indorsee to enforce the instrument. A person paying the instrument or taking it for value or collection may disregard the condition, and the rights and liabilities of that person are not affected by whether the condition has been fulfilled.

(3) If an instrument bears an indorsement described in Subsection 70A-4-201(2), or in blank or to a particular bank using the words "for deposit," "for collection," or other words indicating a purpose of having the instrument collected by a bank for the indorser or for a particular account, the following rules apply:

(a) A person, other than a bank, who purchases the instrument when so indorsed converts the instrument unless the amount paid for the instrument is received by the indorser or applied consistently with the indorsement.

(b) A depository bank that purchases the instrument or takes it for collection when so indorsed converts the instrument unless the amount paid by the bank with respect to the instrument is received by the indorser or applied consistently with the indorsement.

(c) A payor bank that is also the depository bank or that takes the instrument for immediate payment over the counter from a person other than a collecting bank converts the instrument unless the proceeds of the instrument are received by the indorser or applied consistently with the indorsement.

(d) Except as otherwise provided in Subsection (3)(c), a payor bank or intermediary bank may disregard the indorsement and is not liable if the proceeds of the instrument are not received by the indorser or applied consistently with the indorsement.

(4) Except for an indorsement covered by Subsection (3), if an instrument bears an indorsement using words to the effect that payment is to be made to the indorsee as agent, trustee, or other fiduciary for the benefit of the indorser or another person, the following rules apply:

(a) Unless there is notice of breach of fiduciary duty as provided in Section 70A-3-307, a person who purchases the instrument from the indorsee or takes the instrument from the indorsee for collection or payment may pay the proceeds of payment or the value given for the instrument to the indorsee without regard to whether the indorsee violates a fiduciary duty to the indorser.

(b) A subsequent transferee of the instrument or person who pays the instrument is neither given notice nor otherwise affected by the restriction in the indorsement unless the transferee or payor knows that the fiduciary dealt with the instrument or its proceeds in breach of fiduciary duty.

(5) The presence on an instrument of an indorsement to which this section applies does not prevent a purchaser of the instrument from becoming a holder in due course of the instrument unless the purchaser is a converter under Subsection (3) or has notice or knowledge of breach of fiduciary duty as stated in Subsection (4).

(6) In an action to enforce the obligation of a party to pay the instrument, the obligor

has a defense if payment would violate an indorsement to which this section applies and the payment is not permitted by this section.

Section 115. Section **70A-3-307** is amended to read:

**70A-3-307. Notice of breach of fiduciary duty.**

(1) In this section:

(a) "Fiduciary" means an agent, trustee, partner, corporate officer or director, or other representative owing a fiduciary duty with respect to an instrument.

(b) "Represented person" means the principal, beneficiary, partnership, corporation, or other person to whom the duty stated in Subsection (1)(a) is owed.

(2) If an instrument is taken from a fiduciary for payment or collection or for value, the taker has knowledge of the fiduciary status of the fiduciary, and the represented person makes a claim to the instrument or its proceeds on the basis that the transaction of the fiduciary is a breach of fiduciary duty, the following rules apply:

(a) Notice of breach of fiduciary duty by the fiduciary is notice of the claim of the represented person.

(b) In the case of an instrument payable to the represented person or the fiduciary as such, the taker has notice of the breach of fiduciary duty if the instrument is:

(i) taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary;

(ii) taken in a transaction known by the taker to be for the personal benefit of the fiduciary; or

(iii) deposited to an account other than an account of the fiduciary, as such, or an account of the represented person.

(c) If an instrument is issued by the represented person or the fiduciary as such, and made payable to the fiduciary personally, the taker does not have notice of the breach of fiduciary duty unless the taker knows of the breach of fiduciary duty.

(d) If an instrument is issued by the represented person or the fiduciary as such, to the taker as payee, the taker has notice of the breach of fiduciary duty if the instrument is:

(i) taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary;

(ii) taken in a transaction known by the taker to be for the personal benefit of the

5608 fiduciary; or

5609 (iii) deposited to an account other than an account of the fiduciary, as such, or an  
5610 account of the represented person.

5611 Section 116. Section **70A-3-310** is amended to read:

5612 **70A-3-310. Effect of instrument on obligation for which taken.**

5613 (1) Unless otherwise agreed, if a certified check, cashier's check, or teller's check is  
5614 taken for an obligation, the obligation is discharged to the same extent discharge would result if  
5615 an amount of money equal to the amount of the instrument were taken in payment of the  
5616 obligation. Discharge of the obligation does not affect any liability that the obligor may have  
5617 as an indorser of the instrument.

5618 (2) Unless otherwise agreed and except as provided in Subsection (1), if a note or an  
5619 uncertified check is taken for an obligation, the obligation is suspended to the same extent the  
5620 obligation would be discharged if an amount of money equal to the amount of the instrument  
5621 were taken, and the following rules apply:

5622 (a) In the case of an uncertified check, suspension of the obligation continues until  
5623 dishonor of the check or until it is paid or certified. Payment or certification of the check  
5624 results in discharge of the obligation to the extent of the amount of the check.

5625 (b) In the case of a note, suspension of the obligation continues until dishonor of the  
5626 note or until it is paid. Payment of the note results in discharge of the obligation to the extent  
5627 of the payment.

5628 (c) Except as provided in Subsection (2)(d), if the check or note is dishonored and the  
5629 obligee of the obligation for which the instrument was taken is the person entitled to enforce  
5630 the instrument, the obligee may enforce either the instrument or the obligation. In the case of  
5631 an instrument of a third person which is negotiated to the obligee by the obligor, discharge of  
5632 the obligor on the instrument also discharges the obligation.

5633 (d) If the person entitled to enforce the instrument taken for an obligation is a person  
5634 other than the obligee, the obligee may not enforce the obligation to the extent the obligation is  
5635 suspended. If the obligee is the person entitled to enforce the instrument but no longer has  
5636 possession of it because it was lost, stolen, or destroyed, the obligation may not be enforced to  
5637 the extent of the amount payable on the instrument, and to that extent the obligee's rights  
5638 against the obligor are limited to enforcement of the instrument.

(3) If an instrument other than one described in Subsection (1) or (2) is taken for an obligation, the effect is that stated in Subsection (1) if the instrument is one on which a bank is liable as maker or acceptor, or that stated in Subsection (2) in any other case.

Section 117. Section **70A-3-502** is amended to read:

**70A-3-502. Dishonor.**

(1) Dishonor of a note is governed by the following rules:

(a) If the note is payable on demand, the note is dishonored if presentment is duly made to the maker and the note is not paid on the day of presentment.

(b) If the note is not payable on demand and is payable at or through a bank or the terms of the note require presentment, the note is dishonored if presentment is duly made and the note is not paid on the day it becomes payable or the day of presentment, whichever is later.

(c) If the note is not payable on demand and Subsection (1)(b) does not apply, the note is dishonored if it is not paid on the day it becomes payable.

(2) Dishonor of an unaccepted draft other than a documentary draft is governed by the following rules:

(a) If a check is duly presented for payment to the payor bank otherwise than for immediate payment over the counter, the check is dishonored if the payor bank makes timely return of the check or sends timely notice of dishonor or nonpayment under Section 70A-4-301 or 70A-4-302, or becomes accountable for the amount of the check under Section 70A-4-302.

(b) If a draft is payable on demand and Subsection (2)(a) does not apply, the draft is dishonored if presentment for payment is duly made to the drawee and the draft is not paid on the day of presentment.

(c) If a draft is payable on a date stated in the draft, the draft is dishonored if presentment for payment is duly made to the drawee and payment is not made on the day the draft becomes payable or the day of presentment, whichever is later, or presentment for acceptance is duly made before the day the draft becomes payable and the draft is not accepted on the day of presentment.

(d) If a draft is payable on elapse of a period of time after sight or acceptance, the draft is dishonored if presentment for acceptance is duly made and the draft is not accepted on the day of presentment.

(3) Dishonor of an unaccepted documentary draft occurs according to the rules stated

in Subsections (2)(b), (c), and (d), except that payment or acceptance may be delayed without dishonor until no later than the close of the third business day of the drawee following the day on which payment or acceptance is required by those subsections.

(4) Dishonor of an accepted draft is governed by the following rules:

(a) If the draft is payable on demand, the draft is dishonored if presentment for payment is duly made to the acceptor and the draft is not paid on the day of presentment.

(b) If the draft is not payable on demand, the draft is dishonored if presentment for payment is duly made to the acceptor and payment is not made on the day it becomes payable or the day of presentment, whichever is later.

(5) In any case in which presentment is otherwise required for dishonor under this section and presentment is excused under Section 70A-3-504, dishonor occurs without presentment if the instrument is not duly accepted or paid.

(6) If a draft is dishonored because timely acceptance of the draft was not made and the person entitled to demand acceptance consents to a late acceptance, from the time of acceptance the draft is treated as never having been dishonored.

Section 118. Section **70A-4a-507** is amended to read:

**70A-4a-507. Choice of law.**

(1) The following rules apply unless the affected parties otherwise agree or Subsection (3) applies:

(a) The rights and obligations between the sender of a payment order and the receiving bank are governed by the law of the jurisdiction in which the receiving bank is located.

(b) The rights and obligations between the beneficiary's bank and the beneficiary are governed by the law of the jurisdiction in which the beneficiary's bank is located.

(c) The issue of when payment is made pursuant to a funds transfer by the originator to the beneficiary is governed by the law of the jurisdiction in which the beneficiary's bank is located.

(2) If the parties described in Subsections (1)(a), (b), and (c) have made an agreement selecting the law of a particular jurisdiction to govern rights and obligations between each other, the law of that jurisdiction governs those rights and obligations, whether or not the payment order or the funds transfer bears a reasonable relation to that jurisdiction.

(3) (a) A funds transfer system rule may select the law of a particular jurisdiction to

5701 govern:

5702 (i) rights and obligations between participating banks with respect to payment orders  
5703 transmitted or processed through the system; or

5704 (ii) the rights and obligations of some or all parties to a funds transfer, any part of  
5705 which is carried out by means of the system.

5706 (b) A choice of law made pursuant to Subsection (3)(a)(i) is binding on participating  
5707 banks. A choice of law made pursuant to Subsection (3)(a)(ii) is binding on the originator,  
5708 other sender, or a receiving bank having notice that the funds transfer system might be used in  
5709 the funds transfer and of the choice of law by the system when the originator, other sender, or  
5710 receiving bank issued or accepted a payment order. The beneficiary of a funds transfer is  
5711 bound by the choice of law if, at the time the funds transfer is initiated, the beneficiary has  
5712 notice that the funds transfer system might be used in the funds transfer and of the choice of  
5713 law by the system. The law of a jurisdiction selected pursuant to this Subsection (3) may  
5714 govern whether or not that law bears a reasonable relation to the matter in issue.

5715 (4) In the event of inconsistency between an agreement under Subsection (2) and a  
5716 choice of law rule under Subsection (3), the agreement under Subsection (2) prevails.

5717 (5) If a funds transfer is made by use of more than one funds transfer system and there  
5718 is inconsistency between choice of law rules of the systems, the matter in issue is governed by  
5719 the law of the selected jurisdiction that has the most significant relationship to the matter in  
5720 issue.

5721 Section 119. Section **70A-8-106** is amended to read:

5722 **70A-8-106. Whether indorsement, instruction, or entitlement order is effective.**

5723 (1) "Appropriate person" means:

5724 (a) with respect to an indorsement, the person specified by a security certificate or by  
5725 an effective special indorsement to be entitled to the security;

5726 (b) with respect to an instruction, the registered owner of an uncertificated security;

5727 (c) with respect to an entitlement order, the entitlement holder;

5728 (d) if the person designated in Subsection (1)(a), (b), or (c) is deceased, the designated  
5729 person's successor taking under other law or the designated person's personal representative  
5730 acting for the estate of the decedent; or

5731 (e) if the person designated in Subsection (1)(a), (b), or (c) lacks capacity, the

designated person's guardian, conservator, or other similar representative who has power under other law to transfer the security or financial asset.

(2) An indorsement, instruction, or entitlement order is effective if:

(a) it is made by the appropriate person;

(b) it is made by a person who has power under the law of agency to transfer the security or financial asset on behalf of the appropriate person, including, in the case of an instruction or entitlement order, a person who has control under Subsection 70A-8-105(3)(b) or (4)(b); or

(c) the appropriate person has ratified it or is otherwise precluded from asserting its ineffectiveness.

(3) An indorsement, instruction, or entitlement order made by a representative is effective even if:

(a) the representative has failed to comply with a controlling instrument or with the law of the state having jurisdiction of the representative relationship, including any law requiring the representative to obtain court approval of the transaction; or

(b) the representative's action in making the indorsement, instruction, or entitlement order or using the proceeds of the transaction is otherwise a breach of duty.

(4) If a security is registered in the name of or specially indorsed to a person described as a representative, or if a securities account is maintained in the name of a person described as a representative, an indorsement, instruction, or entitlement order made by the person is effective even though the person is no longer serving in the described capacity.

(5) Effectiveness of an indorsement, instruction, or entitlement order is determined as of the date the indorsement, instruction, or entitlement order is made, and an indorsement, instruction, or entitlement order does not become ineffective by reason of any later change of circumstances.

Section 120. Section **70A-8-202** is amended to read:

**70A-8-202. Issuer's responsibility and defenses -- Notice of defect or defense.**

(1) Even against a purchaser for value and without notice, the terms of a certificated security include terms stated on the certificate and terms made part of the security by reference on the certificate to another instrument, indenture, or document or to a constitution, statute, ordinance, rule, regulation, order, or the like, to the extent the terms referred to do not conflict

with terms stated on the certificate. A reference under this subsection does not of itself charge a purchaser for value with notice of a defect going to the validity of the security, even if the certificate expressly states that a person accepting it admits notice. The terms of an uncertificated security include those stated in any instrument, indenture, or document or in a constitution, statute, ordinance, rule, regulation, order, or the like, pursuant to which the security is issued.

(2) The following rules apply if an issuer asserts that a security is not valid:

(a) A security other than one issued by a government or governmental subdivision, agency, or instrumentality, even though issued with a defect going to its validity, is valid in the hands of a purchaser for value and without notice of the particular defect unless the defect involves a violation of a constitutional provision. In that case, the security is valid in the hands of a purchaser for value and without notice of the defect, other than one who takes by original issue.

(b) Subsection (2)(a) applies to an issuer that is a government or governmental subdivision, agency, or instrumentality only if there has been substantial compliance with the legal requirements governing the issue or the issuer has received a substantial consideration for the issue as a whole or for the particular security and a stated purpose of the issue is one for which the issuer has power to borrow money or issue the security.

(3) Except as otherwise provided in Section 70A-8-205, lack of genuineness of a certificated security is a complete defense, even against a purchaser for value and without notice.

(4) All other defenses of the issuer of a security, including nondelivery and conditional delivery of a certificated security, are ineffective against a purchaser for value who has taken the certificated security without notice of the particular defense.

(5) This section does not affect the right of a party to cancel a contract for a security "when, as and if issued" or "when distributed" in the event of a material change in the character of the security that is the subject of the contract or in the plan or arrangement pursuant to which the security is to be issued or distributed.

(6) If a security is held by a securities intermediary against whom an entitlement holder has a security entitlement with respect to the security, the issuer may not assert any defense that the issuer could not assert if the entitlement holder held the security directly.

5794 Section 121. Section **75-2-103** is amended to read:

5795 **75-2-103. Share of heirs other than surviving spouse.**

5796 (1) Any part of the intestate estate not passing to the decedent's surviving spouse under  
5797 Section 75-2-102, or the entire intestate estate if there is no surviving spouse, passes in the  
5798 following order to the individuals designated below who survive the decedent:

5799 (a) to the decedent's descendants per capita at each generation as defined in Subsection  
5800 75-2-106(2);

5801 (b) if there is no surviving descendant, to the decedent's parents equally if both survive,  
5802 or to the surviving parent;

5803 (c) if there is no surviving descendant or parent, to the descendants of the decedent's  
5804 parents or either of them per capita at each generation as defined in Subsection 75-2-106(3);

5805 (d) if there is no surviving descendant, parent, or descendant of a parent, but the  
5806 decedent is survived by one or more grandparents or descendants of grandparents, half of the  
5807 estate passes to the decedent's paternal grandparents equally if both survive, or to the surviving  
5808 paternal grandparent, or to the descendants of the decedent's paternal grandparents or either of  
5809 them if both are deceased, the descendants taking per capita at each generation as defined in  
5810 Subsection 75-2-106(3); and the other half passes to the decedent's maternal relatives in the  
5811 same manner; but if there is no surviving grandparent or descendant of a grandparent on either  
5812 the paternal or the maternal side, the entire estate passes to the decedent's relatives on the other  
5813 side in the same manner as the half.

5814 (2) For purposes of Subsections (1)(a), (b), (c), and (d), any nonprobate transfer, as  
5815 defined in Section 75-2-205, received by an heir is chargeable against the intestate share of  
5816 such heir.

5817 Section 122. Section **75-2-302** is amended to read:

5818 **75-2-302. Omitted children.**

5819 (1) Except as provided in Subsection (2), if a testator fails to provide in his will for any  
5820 of his children born or adopted after the execution of the will, the omitted after-born or  
5821 after-adopted child receives a share in the estate as follows:

5822 (a) If the testator had no child living when he executed the will, an omitted after-born  
5823 or after-adopted child receives a share in the estate equal in value to that which the child would  
5824 have received had the testator died intestate, unless the will devised all or substantially all of

the estate to the other parent of the omitted child and that other parent survives the testator and is entitled to take under the will.

(b) If the testator had one or more children living when he executed the will, and the will devised property or an interest in property to one or more of the then-living children, an omitted after-born or after-adopted child is entitled to share in the testator's estate as follows:

(i) The portion of the testator's estate in which the omitted after-born or after-adopted child is entitled to share is limited to devises made to the testator's then-living children under the will.

(ii) The omitted after-born or after-adopted child is entitled to receive the share of the testator's estate, as limited in Subsection (1)(b)(i), that the child would have received had the testator included all omitted after-born and after-adopted children with the children to whom devises were made under the will and had given an equal share of the estate to each child.

(iii) To the extent feasible, the interest granted an omitted after-born or after-adopted child under this section shall be of the same character, whether equitable or legal, present or future, as that devised to the testator's then-living children under the will.

(iv) In satisfying a share provided by this section, devises to the testator's children who were living when the will was executed abate ratably. In abating the devises of the then-living children, the court shall preserve to the maximum extent possible the character of the testamentary plan adopted by the testator.

(2) Neither Subsection (1)(a) nor Subsection (1)(b) applies if:

(a) it appears from the will that the omission was intentional; or

(b) the testator provided for the omitted after-born or after-adopted child by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence.

(3) If at the time of execution of the will the testator fails to provide in his will for a living child solely because he believes the child to be dead, the child is entitled to share in the estate as if the child were an omitted after-born or after-adopted child.

(4) In satisfying a share provided by Subsection (1)(a), devises made by the will abate under Section 75-3-902.

Section 123. Section **75-2-603** is amended to read:

**75-2-603. Definitions -- Antilapse -- Deceased devisee -- Class gifts -- Substitute gifts.**

(1) As used in this section:

(a) "Alternative devise" means a devise that is expressly created by the will and, under the terms of the will, can take effect instead of another devise on the happening of one or more events, including survival of the testator or failure to survive the testator, whether an event is expressed in condition-precedent, condition-subsequent, or any other form. A residuary clause constitutes an alternative devise with respect to a nonresiduary devise only if the will specifically provides that, upon lapse or failure, the nonresiduary devise, or nonresiduary devises in general, pass under the residuary clause.

(b) "Class member" includes an individual who fails to survive the testator but who would have taken under a devise in the form of a class gift had he survived the testator.

(c) "Devise" includes an alternative devise, a devise in the form of a class gift, and an exercise of a power of appointment.

(d) "Devisee" includes:

(i) a class member if the devise is in the form of a class gift;

(ii) an individual or class member who was deceased at the time the testator executed his will as well as an individual or class member who was then living but who failed to survive the testator; and

(iii) an appointee under a power of appointment exercised by the testator's will.

(e) "Stepchild" means a child of the surviving, deceased, or former spouse of the testator or of the donor of a power of appointment, and not of the testator or donor.

(f) "Surviving devisee" or "surviving descendant" means a devisee or a descendant who neither predeceased the testator nor is considered to have predeceased the testator under Section 75-2-702.

(g) "Testator" includes the donee of a power of appointment if the power is exercised in the testator's will.

(2) If a devisee fails to survive the testator and is a grandparent, a descendant of a grandparent, or a stepchild of either the testator or the donor of a power of appointment exercised by the testator's will, the following apply:

(a) Except as provided in Subsection (2)(d), if the devise is not in the form of a class

gift and the deceased devisee leaves surviving descendants, a substitute gift is created in the devisee's surviving descendants. They take per capita at each generation the property to which the devisee would have been entitled had the devisee survived the testator.

(b) Except as provided in Subsection (2)(d), if the devise is in the form of a class gift, other than a devise to "issue," "descendants," "heirs of the body," "heirs," "next-of-kin," "relatives," or "family," or a class described by language of similar import, a substitute gift is created in the surviving descendant's of any deceased devisee. The property to which the devisees would have been entitled had all of them survived the testator passes to the surviving devisees and the surviving descendants of the deceased devisees. Each surviving devisee takes the share to which he would have been entitled had the deceased devisees survived the testator. Each deceased devisee's surviving descendants who are substituted for the deceased devisee take per capita at each generation the share to which the deceased devisee would have been entitled had the deceased devisee survived the testator. For the purposes of this Subsection (2)(b), "deceased devisee" means a class member who failed to survive the testator and left one or more surviving descendants.

(c) For the purposes of Section 75-2-601, words of survivorship, such as in a devise to an individual "if he survives me," or in a devise to "my surviving children," are, in the absence of clear and convincing evidence, a sufficient indication of an intent contrary to the application of this section.

(d) If the will creates an alternative devise with respect to a devise for which a substitute gift is created by Subsection (2)(a) or (b), the substitute gift is superseded by the alternative devise only if an expressly designated devisee of the alternative devise is entitled to take under the will.

(e) Unless the language creating a power of appointment expressly excludes the substitution of the descendants of an appointee for the appointee, a surviving descendant of a deceased appointee of a power of appointment can be substituted for the appointee under this section, whether or not the descendant is an object of the power.

Section 124. Section **75-2-606** is amended to read:

**75-2-606. Nonademption of specific devises -- Unpaid proceeds of sale, condemnation, or insurance -- Sale by conservatory or agent.**

(1) A specific devisee has a right to the specifically devised property in the testator's

5918 estate at death and:

5919 (a) any balance of the purchase price, together with any security agreement, owing  
5920 from a purchaser to the testator at death by reason of sale of the property;

5921 (b) any amount of a condemnation award for the taking of the property unpaid at death;

5922 (c) any proceeds unpaid at death on fire or casualty insurance on or other recovery for  
5923 injury to the property;

5924 (d) property owned by the testator at death and acquired as a result of foreclosure, or  
5925 obtained in lieu of foreclosure, of the security interest for a specifically devised obligation;

5926 (e) real or tangible personal property owned by the testator at death which the testator  
5927 acquired as a replacement for specifically devised real or tangible personal property; and

5928 (f) unless the facts and circumstances indicate that ademption of the devise was  
5929 intended by the testator or ademption of the devise is consistent with the testator's manifested  
5930 plan of distribution, the value of the specifically devised property to the extent the specifically  
5931 devised property is not in the testator's estate at death and its value or its replacement is not  
5932 covered by Subsections (1)(a) through (e).

5933 (2) If specifically devised property is sold or mortgaged by a conservator or by an agent  
5934 acting within the authority of a durable power of attorney for an incapacitated principal, or if a  
5935 condemnation award, insurance proceeds, or recovery for injury to the property are paid to a  
5936 conservator or to an agent acting within the authority of a durable power of attorney for an  
5937 incapacitated principal, the specific devisee has the right to a general pecuniary devise equal to  
5938 the net sale price, the amount of the unpaid loan, the condemnation award, the insurance  
5939 proceeds, or the recovery.

5940 (3) The right of a specific devisee under Subsection (2) is reduced by any right the  
5941 devisee has under Subsection (1).

5942 (4) For the purposes of the references in Subsection (2) to a conservator, Subsection (2)  
5943 does not apply if after the sale, mortgage, condemnation, casualty, or recovery, it was  
5944 adjudicated that the testator's incapacity ceased and the testator survived the adjudication by  
5945 one year.

5946 (5) For the purposes of the references in Subsection (2) to an agent acting within the  
5947 authority of a durable power of attorney for an incapacitated principal:

5948 (a) "incapacitated principal" means a principal who is an incapacitated person;

(b) no adjudication of incapacity before death is necessary; and

(c) the acts of an agent within the authority of a durable power of attorney are presumed to be for an incapacitated principal.

Section 125. Section **75-5-410** is amended to read:

**75-5-410. Who may be appointed conservator -- Priorities.**

(1) The court may appoint an individual, or a corporation with general power to serve as trustee, as conservator of the estate of a protected person. The following are entitled to consideration for appointment in the order listed:

(a) a conservator, guardian of property, or other like fiduciary appointed or recognized by the appropriate court of any other jurisdiction in which the protected person resides;

(b) an individual or corporation nominated by the protected person if he is 14 or more years of age and has, in the opinion of the court, sufficient mental capacity to make an intelligent choice;

(c) the court shall appoint a conservator in accordance with the protected person's most recent nomination, unless the potential conservator is disqualified or the court finds other good cause why that person should not serve as conservator. The nomination shall be in writing and shall be signed by the person making the nomination. The nomination shall be in substantially the following form:

Nomination of Conservator

I, (Name), being of sound mind and not acting under duress, fraud, or other undue influence, do hereby nominate (Name, current residence, and relationship, if any, of the nominee) to serve as the conservator of my property in the event that after the date of this instrument I become incapacitated or have other need for protection.

Executed at \_\_\_\_\_ (city, state)

on this \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
(Signature)

(d) a person who has been nominated by the protected person, by any means other than that described in Subsection (1)(c), if the protected person was 14 years of age or older when the nomination was executed and, in the opinion of the court, that person acted with sufficient mental capacity to make the nomination;

- 5980 (e) the spouse of the protected person;
- 5981 (f) an adult child of the protected person;
- 5982 (g) a parent of the protected person, or a person nominated by the will of a deceased
- 5983 parent;
- 5984 (h) any relative of the protected person with whom he has resided for more than six
- 5985 months prior to the filing of the petition;
- 5986 (i) a person nominated by the person who is caring for him or paying benefits to him.
- 5987 (2) A person in the priorities described in Subsection (1)(a), (e), (f), (g), or (h) [~~above~~]
- 5988 may nominate in writing a person to serve in his stead. With respect to persons having equal
- 5989 priority, the court is to select the one who is best qualified of those willing to serve. The court,
- 5990 for good cause, may pass over a person having priority and appoint a person having less
- 5991 priority or no priority.

5992 Section 126. Section **76-2-402** is amended to read:

5993 **76-2-402. Force in defense of person -- Forcible felony defined.**

5994 (1) A person is justified in threatening or using force against another when and to the

5995 extent that he or she reasonably believes that force is necessary to defend himself or a third

5996 person against such other's imminent use of unlawful force. However, that person is justified

5997 in using force intended or likely to cause death or serious bodily injury only if he or she

5998 reasonably believes that force is necessary to prevent death or serious bodily injury to himself

5999 or a third person as a result of the other's imminent use of unlawful force, or to prevent the

6000 commission of a forcible felony.

6001 (2) A person is not justified in using force under the circumstances specified in

6002 Subsection (1) if he or she:

6003 (a) initially provokes the use of force against himself with the intent to use force as an

6004 excuse to inflict bodily harm upon the assailant;

6005 (b) is attempting to commit, committing, or fleeing after the commission or attempted

6006 commission of a felony; or

6007 (c) (i) was the aggressor or was engaged in a combat by agreement, unless he

6008 withdraws from the encounter and effectively communicates to the other person his intent to do

6009 so and, notwithstanding, the other person continues or threatens to continue the use of unlawful

6010 force; and

(ii) for purposes of Subsection (2)(c)(i) the following do not, by themselves, constitute "combat by agreement":

(A) voluntarily entering into or remaining in an ongoing relationship; or

(B) entering or remaining in a place where one has a legal right to be.

(3) A person does not have a duty to retreat from the force or threatened force described in Subsection (1) in a place where that person has lawfully entered or remained, except as provided in Subsection (2)(c).

(4) For purposes of this section, a forcible felony includes aggravated assault, mayhem, aggravated murder, murder, manslaughter, kidnapping, and aggravated kidnapping, rape, forcible sodomy, rape of a child, object rape, object rape of a child, sexual abuse of a child, aggravated sexual abuse of a child, and aggravated sexual assault as defined in Title 76, Chapter 5, Offenses Against the Person, and arson, robbery, and burglary as defined in Title 76, Chapter 6, Offenses Against Property. Any other felony offense which involves the use of force or violence against a person so as to create a substantial danger of death or serious bodily injury also constitutes a forcible felony. Burglary of a vehicle, defined in Section 76-6-204, does not constitute a forcible felony except when the vehicle is occupied at the time unlawful entry is made or attempted.

(5) In determining imminence or reasonableness under Subsection (1), the trier of fact may consider, but is not limited to, any of the following factors:

(a) the nature of the danger;

(b) the immediacy of the danger;

(c) the probability that the unlawful force would result in death or serious bodily injury;

(d) the other's prior violent acts or violent propensities; and

(e) any patterns of abuse or violence in the parties' relationship.

Section 127. Section **76-9-301.1** is amended to read:

**76-9-301.1. Dog fighting -- Training dogs for fighting -- Dog fighting exhibitions.**

(1) It is unlawful for any person to:

(a) own, possess, keep, or train a dog with the intent to engage it in an exhibition of fighting with another dog;

(b) cause a dog to fight with another dog or cause a dog to injure another dog for

6042 amusement or gain;

6043 (c) tie, attach, or fasten any live animal to a machine or device propelled by any power,  
6044 for the purpose of causing the animal to be pursued by a dog; or

6045 (d) permit or allow any act which violates Subsection (1)(a), (b), or (c) on any premises  
6046 under his charge; or to control, aid, or abet any such act.

6047 (2) Possession of any breaking stick, treadmill, wheel, hot walker, cat mill, cat walker,  
6048 jenni, or other paraphernalia together with evidence that the paraphernalia is being used or is  
6049 intended for use in the unlawful training of a dog to fight with another dog, together with the  
6050 possession of any such dog, is prima facie evidence of violation of Subsections (1)(b) and ~~[(+)]~~  
6051 (c).

6052 (3) A person who violates Subsection (1) is guilty of a third degree felony, and any fine  
6053 imposed may not exceed \$25,000.

6054 (4) It is unlawful for a person to knowingly and intentionally be present as a spectator  
6055 at any place, building, or tenement where preparations are being made for an exhibition of dog  
6056 fighting, or to knowingly and intentionally be present at a dog fighting exhibition or any other  
6057 occurrence of fighting or injury described in this section. A person who violates this  
6058 subsection is guilty of a class B misdemeanor.

6059 (5) Nothing in this section prohibits any of the following:

6060 (a) the use of dogs for management of livestock by the owner, his employees or agents,  
6061 or any other person in the lawful custody of livestock;

6062 (b) the use of dogs for hunting; or

6063 (c) the training of dogs or the possession or use of equipment in the training of dogs for  
6064 any purpose not prohibited by law.

6065 Section 128. Section **76-10-920** is amended to read:

6066 **76-10-920. Fine and imprisonment for violation -- Certain vertical agreements**  
6067 **excluded -- Nolo contendere.**

6068 (1) (a) Any person who violates Section 76-10-914 by price fixing, bid rigging,  
6069 agreeing among competitors to divide customers or territories, or by engaging in a group  
6070 boycott with specific intent of eliminating competition shall be punished, notwithstanding  
6071 Sections 76-3-301 and 76-3-302:

6072 (i) if an individual, by a fine not to exceed \$100,000 or by imprisonment for an

6073 indeterminate time not to exceed three years, or both; or

6074 (ii) if by a person other than an individual, a fine not to exceed \$500,000.

6075 (b) Subsection (1)(a) may not be construed to include vertical agreements between a  
6076 manufacturer, its distributors, or their subdistributors dividing customers and territories solely  
6077 involving the manufacturer's commodity or service where the manufacturer distributes its  
6078 commodity or service both directly and through distributors or subdistributors in competition  
6079 with itself.

6080 (2) A defendant may plead nolo contendere to a charge brought under this title but only  
6081 with the consent of the court. Such a plea shall be accepted by the court only after due  
6082 consideration of the views of the parties and the interest of the public in the effective  
6083 administration of justice.

6084 Section 129. Section **76-10-1219** is amended to read:

6085 **76-10-1219. Qualification for distribution of films -- Corporations and others to**  
6086 **file statements.**

6087 (1) A distributor which is a corporation shall be qualified to distribute films within this  
6088 state if:

6089 (a) it is a domestic corporation in good standing or a foreign corporation authorized to  
6090 transact business in this state;

6091 (b) it has filed with the Division of Corporations and Commercial Code a statement  
6092 upon forms prescribed and furnished by that office, signed and verified on behalf of the  
6093 corporation by an officer qualified and authorized to bind the corporation for such purpose, a  
6094 statement indicating that it desires to be qualified to distribute films in this state and that it  
6095 submits itself to the jurisdiction and laws of this state relating thereto and, further, indicating  
6096 the following:

6097 (i) the address of its principal office;

6098 (ii) the name under which it wishes to distribute films in this state;

6099 (iii) the names and addresses of all directors and officers;

6100 (iv) the address of the registered office in this state; and

6101 (v) the name of its registered agent in this state;

6102 (c) it files a current statement on or before March 1 of each year thereafter indicating  
6103 that information specified in Subsection (1)(b) [~~of this Subsection (1)~~] in the manner provided

6104 therein.

6105 (2) A distributor which is not a corporation shall be qualified to distribute films within  
6106 this state if:

6107 (a) it has and continuously maintains a registered office in this state;

6108 (b) it has a registered agent whose business address is at that registered office and  
6109 which is either an individual residing and domiciled in this state, a domestic corporation in  
6110 good standing, or a foreign corporation authorized to transact business in this state;

6111 (c) it has filed with the Division of Corporations and Commercial Code a statement,  
6112 upon forms prescribed and furnished by that office, signed and verified, indicating that it  
6113 desires to be qualified to distribute films in this state and that it submits itself to the jurisdiction  
6114 and laws of this state relating thereto and, further, indicating the following:

6115 (i) the address of its principal office;

6116 (ii) the name under which it wishes to distribute films in this state;

6117 (iii) the names and address of each partner or the sole proprietor, owning the  
6118 distributorship;

6119 (iv) the address of its registered office in this state; and

6120 (v) the name of its registered agent in this state;

6121 (d) it files a current statement on or before March 1 of each year thereafter indicating  
6122 that information specified in Subsection (2)(b) [~~of this Subsection (2)~~] in the manner provided  
6123 therein.

6124 (3) The Division of Corporations and Commercial Code shall keep a record of all  
6125 processes, notices and demands served upon it pursuant to this section, together with the time  
6126 of such service and its action relating thereto.

6127 (4) This section shall not affect the right to serve any process, notice, or demand,  
6128 required or permitted by law to be served upon a distributor, in any other manner provided by  
6129 law.

6130 Section 130. Section **76-10-2101** is amended to read:

6131 **76-10-2101. Use of recycling bins -- Prohibited items -- Penalties.**

6132 (1) As used in this section:

6133 (a) "Recycling" means the process of collecting materials diverted from the waste  
6134 stream for reuse.

(b) "Recycling bin" means any receptacle made available to the public by a governmental entity or private business for the collection of any source-separated item for recycling purposes.

(2) It is an infraction to place any prohibited item or substance in a recycling bin if the bin is posted with the following information printed legibly in basic English:

(a) a descriptive list of the items that may be deposited in the recycling bin, entitled in boldface capital letters: "ITEMS YOU MAY DEPOSIT IN THIS RECYCLING BIN:";

(b) at the end of the list in Subsection (2)(a), the following statement in boldface capital letters: "REMOVING FROM THIS BIN ANY ITEM THAT IS LISTED ABOVE AND THAT YOU DID NOT PLACE IN THE CONTAINER IS THE CRIMINAL OFFENSE OF THEFT, PUNISHABLE BY LAW.";

(c) the following statement in boldface capital letters: "DEPOSIT OF ANY OTHER ITEM IN THIS RECYCLING BIN IS AGAINST THE LAW.";

(d) the following statement in boldface capital letters, posted on the recycling collection container in close proximity to the notices required under Subsections (2)(a), (b), and (c): "PLACING ANY ITEM OR SUBSTANCE IN THIS RECYCLING BIN OTHER THAN THOSE ALLOWED IN THE LIST POSTED ON THIS BIN IS AN INFRACTION, PUNISHABLE BY A MAXIMUM FINE OF \$750."; and

(e) the name and telephone number of the entity that owns the recycling bin or is responsible for its placement and maintenance.

Section 131. Section **77-7-5** is amended to read:

**77-7-5. Issuance of warrant -- Time and place arrests may be made -- Contents of warrant -- Responsibility for transporting prisoners -- Court clerk to dispense restitution for transportation.**

(1) A magistrate may issue a warrant for arrest upon finding probable cause to believe that the person to be arrested has committed a public offense. If the offense charged is:

(a) a felony, the arrest upon a warrant may be made at any time of the day or night; or

(b) a misdemeanor, the arrest upon a warrant can be made at night only if:

(i) the magistrate has endorsed authorization to do so on the warrant;

(ii) the person to be arrested is upon a public highway, in a public place, or in a place open to or accessible to the public; or

(iii) the person to be arrested is encountered by a peace officer in the regular course of that peace officer's investigation of a criminal offense unrelated to the misdemeanor warrant for arrest.

(2) For the purpose of Subsection (1):

(a) daytime hours are the hours of 6 a.m. to 10 p.m.; and

(b) nighttime hours are the hours after 10 p.m. and before 6 a.m.

(3) (a) If the magistrate determines that the accused must appear in court, the magistrate shall include in the arrest warrant the name of the law enforcement agency in the county or municipality with jurisdiction over the offense charged.

(b) (i) The law enforcement agency identified by the magistrate under Subsection (3)(a) is responsible for providing inter-county transportation of the defendant, if necessary, from the arresting law enforcement agency to the court site.

(ii) The law enforcement agency named on the warrant may contract with another law enforcement agency to have a defendant transported.

(c) (i) The law enforcement agency identified by the magistrate under Subsection (3)(a) as responsible for transporting the defendant shall provide to the court clerk of the court in which the defendant is tried, an affidavit stating that the defendant was transported, indicating the law enforcement agency responsible for the transportation, and stating the number of miles the defendant was transported.

(ii) The court clerk shall account for restitution paid under Subsection 76-3-201(5) for governmental transportation expenses and disburse restitution monies collected by the court to the law enforcement agency responsible for the transportation of a convicted defendant.

Section 132. Section **77-23a-4** is amended to read:

**77-23a-4. Offenses -- Criminal and civil -- Lawful interception.**

(1) (a) Except as otherwise specifically provided in this chapter, any person who violates Subsection (1)(b) is guilty of an offense and is subject to punishment under Subsection (10), or when applicable, the person is subject to civil action under Subsection (11).

(b) A person commits a violation of this subsection who:

(i) intentionally or knowingly intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept any wire, electronic, or oral communication;

(ii) intentionally or knowingly uses, endeavors to use, or procures any other person to

use or endeavor to use any electronic, mechanical, or other device to intercept any oral communication, when the device is affixed to, or otherwise transmits a signal through a wire, cable, or other like connection used in wire communication or when the device transmits communications by radio, or interferes with the transmission of the communication;

(iii) intentionally or knowingly discloses or endeavors to disclose to any other person the contents of any wire, electronic, or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire, electronic, or oral communication in violation of this section; or

(iv) intentionally or knowingly uses or endeavors to use the contents of any wire, electronic, or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire, electronic, or oral communication in violation of this section.

(2) The operator of a switchboard, or an officer, employee, or agent of a provider of wire or electronic communication service whose facilities are used in the transmission of a wire communication may intercept, disclose, or use that communication in the normal course of his employment while engaged in any activity which is a necessary incident to the rendition of his service or to the protection of the rights or property of the provider of that service. However, a provider of wire communications service to the public may not utilize service observing or random monitoring except for mechanical or service quality control checks.

(3) (a) Providers of wire or electronic communications service, their officers, employees, or agents, and any landlords, custodians, or other persons may provide information, facilities, or technical assistance to persons authorized by law to intercept wire, oral, or electronic communications or to conduct electronic surveillance if the provider and its officers, employees, or agents, and any landlords, custodians, or other specified persons have been provided with:

(i) a court order directing the assistance signed by the authorizing judge; or

(ii) a certification in writing by a person specified in Subsection 77-23a-10(7), or by the attorney general or an assistant attorney general, or by a county attorney or district attorney or his deputy that no warrant or court order is required by law, that all statutory requirements have been met, and that the specified assistance is required.

(b) The order or certification under this subsection shall set the period of time during

which the provision of the information, facilities, or technical assistance is authorized and shall specify the information, facilities, or technical assistance required.

(4) (a) The providers of wire or electronic communications service, their officers, employees, or agents, and any landlords, custodians, or other specified persons may not disclose the existence of any interception or surveillance or the device used to accomplish the interception or surveillance regarding which the person has been furnished an order or certification under this section except as is otherwise required by legal process, and then only after prior notification to the attorney general or to the county attorney or district attorney of the county in which the interception was conducted, as is appropriate.

(b) Any disclosure in violation of this subsection renders the person liable for civil damages under Section 77-23a-11.

(5) A cause of action does not lie in any court against any provider of wire or electronic communications service, its officers, employees, or agents, or any landlords, custodians, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order or certification under this chapter.

(6) Subsections (3), (4), and (5) supersede any law to the contrary.

(7) (a) A person acting under color of law may intercept a wire, electronic, or oral communication if that person is a party to the communication or one of the parties to the communication has given prior consent to the interception.

(b) A person not acting under color of law may intercept a wire, electronic, or oral communication if that person is a party to the communication or one of the parties to the communication has given prior consent to the interception, unless the communication is intercepted for the purpose of committing any criminal or tortious act in violation of state or federal laws.

(c) An employee of a telephone company may intercept a wire communication for the sole purpose of tracing the origin of the communication when the interception is requested by the recipient of the communication and the recipient alleges that the communication is obscene, harassing, or threatening in nature. The telephone company and its officers, employees, and agents shall release the results of the interception, made under this subsection, upon request of the local law enforcement authorities.

(8) A person may:

6259 (a) intercept or access an electronic communication made through an electronic  
6260 communications system that is configured so that the electronic communication is readily  
6261 accessible to the general public;

6262 (b) intercept any radio communication transmitted by:

6263 (i) any station for the use of the general public, or that relates to ships, aircraft,  
6264 vehicles, or persons in distress;

6265 (ii) any government, law enforcement, civil defense, private land mobile, or public  
6266 safety communications system, including police and fire, readily accessible to the general  
6267 public;

6268 (iii) a station operating on an authorized frequency within the bands allocated to the  
6269 amateur, citizens' band, or general mobile radio services; or

6270 (iv) by a marine or aeronautics communications system;

6271 (c) intercept any wire or electronic communication, the transmission of which is  
6272 causing harmful interference to any lawfully operating station or consumer electronic  
6273 equipment, to the extent necessary to identify the source of the interference; or

6274 (d) as one of a group of users of the same frequency, intercept any radio  
6275 communication made through a system that utilizes frequencies monitored by individuals  
6276 engaged in the provision or the use of the system, if the communication is not scrambled or  
6277 encrypted.

6278 (9) (a) Except under Subsection (9)(b), a person or entity providing an electronic  
6279 communications service to the public may not intentionally divulge the contents of any  
6280 communication, while in transmission of that service, to any person or entity other than an  
6281 addressee or intended recipient of the communication or his agent.

6282 (b) A person or entity providing electronic communications service to the public may  
6283 divulge the contents of any communication:

6284 (i) as otherwise authorized under this section or Section 77-23a-9;

6285 (ii) with lawful consent of the originator or any addressee or intended recipient of the  
6286 communication;

6287 (iii) to a person employed or authorized or whose facilities are used to forward the  
6288 communication to its destination; or

6289 (iv) that is inadvertently obtained by the service provider and appears to pertain to the

6290 commission of a crime, if the divulgence is made to a law enforcement agency.

6291 (10) (a) Except under Subsection (10)(b) or [~~Subsection~~] (11), a violation of  
6292 Subsection (1) is a third degree felony.

6293 (b) If the offense is a first offense under this section and is not for a tortious or illegal  
6294 purpose or for purposes of direct or indirect commercial advantage or private commercial gain,  
6295 and the wire or electronic communication regarding which the offense was committed is a  
6296 radio communication that is not scrambled or encrypted:

6297 (i) if the communication is not the radio portion of a cellular telephone communication,  
6298 a public land mobile radio service communication, or paging service communication, and the  
6299 conduct is not under Subsection (11), the offense is a class A misdemeanor; and

6300 (ii) if the communication is the radio portion of a cellular telephone communication, a  
6301 public land mobile radio service communication, or a paging service communication, the  
6302 offense is a class B misdemeanor.

6303 (c) Conduct otherwise an offense under this section is not an offense if the conduct was  
6304 not done for the purpose of direct or indirect commercial advantage or private financial gain,  
6305 and consists of or relates to the interception of a satellite transmission that is not encrypted or  
6306 scrambled, and is either transmitted:

6307 (i) to a broadcasting station for purposes of retransmission to the general public; or

6308 (ii) as an audio subcarrier intended for redistribution to facilities open to the public, but  
6309 in any event not including data transmissions or telephone calls.

6310 (11) (a) A person is subject to civil suit initiated by the state in a court of competent  
6311 jurisdiction when his conduct is prohibited under Subsection (1) and the conduct involves a:

6312 (i) private satellite video communication that is not scrambled or encrypted, and the  
6313 conduct in violation of this chapter is the private viewing of that communication and is not for  
6314 a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or  
6315 private commercial gain; or

6316 (ii) radio communication that is transmitted on frequencies allocated under Subpart D,  
6317 Part 74, Rules of the Federal Communication Commission, that is not scrambled or encrypted  
6318 and the conduct in violation of this chapter is not for a tortious or illegal purpose or for  
6319 purposes of direct or indirect commercial advantage or private commercial gain.

6320 (b) In an action under Subsection (11)(a):

(i) if the violation of this chapter is a first offense under this section and the person is not found liable in a civil action under Section 77-23a-11, the state may seek appropriate injunctive relief;

(ii) if the violation of this chapter is a second or subsequent offense under this section, or the person has been found liable in any prior civil action under Section 77-23a-11, the person is subject to a mandatory \$500 civil penalty.

(c) The court may use any means within its authority to enforce an injunction issued under Subsection (11)(b)(i), and shall impose a civil fine of not less than \$500 for each violation of the injunction.

Section 133. Section **77-23a-10** is amended to read:

**77-23a-10. Application for order -- Authority of order -- Emergency action -- Application -- Entry -- Conditions -- Extensions -- Recordings -- Admissibility or suppression -- Appeal by state.**

(1) Each application for an order authorizing or approving the interception of a wire, electronic, or oral communication shall be made in writing, upon oath or affirmation to a judge of competent jurisdiction, and shall state the applicant's authority to make the application.

Each application shall include:

(a) the identity of the investigative or law enforcement officer making the application, and the officer authorizing the application;

(b) a full and complete statement of the facts and circumstances relied upon by the applicant to justify his belief that an order should be issued, including:

(i) details regarding the particular offense that has been, is being, or is about to be committed;

(ii) except as provided in Subsection (12), a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted;

(iii) a particular description of the type of communication sought to be intercepted; and

(iv) the identity of the person, if known, committing the offense and whose communication is to be intercepted;

(c) a full and complete statement as to whether other investigative procedures have been tried and failed or why they reasonably appear to be either unlikely to succeed if tried or too dangerous;

(d) a statement of the period of time for which the interception is required to be maintained, and if the investigation is of a nature that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter;

(e) a full and complete statement of the facts concerning all previous applications known to the individual authorizing and the individual making the application, made to any judge for authorization to intercept, or for approval of interceptions of wire, electronic, or oral communications involving any of the same persons, facilities, or places specified in the application, and the action taken by the judge on each application;

(f) when the application is for the extension of an order, a statement setting forth the results so far obtained from the interception, or a reasonable explanation of the failure to obtain results; and

(g) additional testimony or documentary evidence in support of the application as the judge may require.

(2) Upon application the judge may enter an ex parte order, as requested or as modified, authorizing or approving interception of wire, electronic, or oral communications within the territorial jurisdiction of the state if the judge determines on the basis of the facts submitted by the applicant that:

(a) there is probable cause for belief that an individual is committing, has committed, or is about to commit a particular offense under Section 77-23a-8;

(b) there is probable cause for belief that particular communications concerning that offense will be obtained through the interception;

(c) normal investigative procedures have been tried and have failed or reasonably appear to be either unlikely to succeed if tried or too dangerous; and

(d) except as provided in Subsection (12), there is probable cause for belief that the facilities from which or the place where the wire, electronic, or oral communications are to be intercepted are being used, or are about to be used, in connection with the commission of the offense, or are leased to, listed in the name of, or commonly used by that person.

(3) Each order authorizing or approving the interception of any wire, electronic, or oral communication shall specify:

6383 (a) the identity of the person, if known, whose communications are to be intercepted;

6384 (b) except as provided in Subsection (12), the nature and location of the  
6385 communications facilities as to which, or the place where, authority to intercept is granted;

6386 (c) a particular description of the type of communication sought to be intercepted, and  
6387 a statement of the particular offense to which it relates;

6388 (d) the identity of the agency authorized to intercept the communications, and of the  
6389 persons authorizing the application; and

6390 (e) the period of time during which the interception is authorized, including a statement  
6391 as to whether the interception shall automatically terminate when the described communication  
6392 has been first obtained.

6393 (4) An order authorizing the interception of a wire, electronic, or oral communication  
6394 shall, upon request of the applicant, direct that a provider of wire or electronic communications  
6395 service, landlord, custodian, or other person shall furnish the applicant forthwith all  
6396 information, facilities, and technical assistance necessary to accomplish the interception  
6397 unobtrusively and with a minimum of interference with the services that the provider, landlord,  
6398 custodian, or person is according the person whose communications are to be intercepted. Any  
6399 provider of wire or electronic communications service, landlord, custodian, or other person  
6400 furnishing the facilities or technical assistance shall be compensated by the applicant for  
6401 reasonable expenses involved in providing the facilities or systems.

6402 (5) (a) An order entered under this chapter may not authorize or approve the  
6403 interception of any wire, electronic, or oral communication for any period longer than is  
6404 necessary to achieve the objective of the authorization, but in any event for no longer than 30  
6405 days. The 30-day period begins on the day the investigative or law enforcement officer first  
6406 begins to conduct an interception under the order, or 10 days after the order is entered,  
6407 whichever is earlier.

6408 (b) Extensions of an order may be granted, but only upon application for an extension  
6409 made under Subsection (1), and if the court makes the findings required by Subsection (2).  
6410 The period of extension may be no longer than the authorizing judge considers necessary to  
6411 achieve the purposes for which it was granted, but in no event for longer than 30 days.

6412 (c) Every order and extension shall contain a provision that the authorization to  
6413 intercept shall be executed as soon as practicable, shall be conducted so as to minimize the

6414 interception of communications not otherwise subject to interception under this chapter, and  
6415 must terminate upon attainment of the authorized objective, or in any event within 30 days.

6416 (d) If the intercepted communication is in a code or foreign language, and an expert in  
6417 that foreign language or code is not reasonably available during the interception period, the  
6418 minimizing of the interception may be accomplished as soon as practicable after the  
6419 interception.

6420 (e) An interception under this chapter may be conducted in whole or in part by  
6421 government personnel or by an individual under contract with the government and acting under  
6422 supervision of an investigative or law enforcement officer authorized to conduct the  
6423 interception.

6424 (6) When an order authorizing interception is entered under this chapter, the order may  
6425 require reports to be made to the judge who issued the order, showing what progress has been  
6426 made toward achievement of the authorized objective and the need for continued interception.  
6427 These reports shall be made at intervals the judge may require.

6428 (7) Notwithstanding any other provision of this chapter, any investigative or law  
6429 enforcement officer who is specially designated by either the attorney general, a county  
6430 attorney or district attorney as provided under Sections 17-18-1 and 17-18-1.7 may intercept  
6431 wire, electronic, or oral communication if an application for an order approving the  
6432 interception is made in accordance with this section and within 48 hours after the interception  
6433 has occurred or begins to occur, when the investigative or law enforcement officer reasonably  
6434 determines that:

6435 (a) an emergency situation exists that involves:

6436 (i) immediate danger of death or serious physical injury to any person;

6437 (ii) conspiratorial activities threatening the national security interest; or

6438 (iii) conspiratorial activities characteristic of organized crime, that require a wire,  
6439 electronic, or oral communication to be intercepted before an order authorizing interception  
6440 can, with diligence, be obtained; and

6441 (b) there are grounds upon which an order could be entered under this chapter to  
6442 authorize the interception.

6443 (8) (a) In the absence of an order under Subsection (7), the interception immediately  
6444 terminates when the communication sought is obtained or when the application for the order is

denied, whichever is earlier.

(b) If the application for approval is denied, or in any other case where the interception is terminated without an order having been issued, the contents of any wire, electronic, or oral communication intercepted shall be treated as having been obtained in violation of this chapter, and an inventory shall be served as provided for in Subsection (9)(d) on the person named in the application.

(9) (a) The contents of any wire, electronic, or oral communication intercepted by any means authorized by this chapter shall, if possible, be recorded on tape or wire or other comparable device. The recording of the contents of any wire, electronic, or oral communication under this Subsection (9)(a) shall be done so as to protect the recording from editing or other alterations. Immediately upon the expiration of the period of an order, or extension, the recordings shall be made available to the judge issuing the order and sealed under his directions. Custody of the recordings shall be where the judge orders. The recordings may not be destroyed, except upon an order of the issuing or denying judge. In any event, it shall be kept for 10 years. Duplicate recordings may be made for use or disclosure under Subsections 77-23a-9(1) and (2) for investigations. The presence of the seal provided by this Subsection (9)(a), or a satisfactory explanation for the absence of one, is a prerequisite for the use or disclosure of the contents of any wire, electronic, or oral communication or evidence derived from it under Subsection 77-23a-9(3).

(b) Applications made and orders granted under this chapter shall be sealed by the judge. Custody of the applications and orders shall be where the judge directs. The applications and orders shall be disclosed only upon a showing of good cause before a judge of competent jurisdiction and may not be destroyed, except on order of the issuing or denying judge. But in any event they shall be kept for 10 years.

(c) Any violation of any provision of this subsection may be punished as contempt of the issuing or denying judge.

(d) Within a reasonable time, but not later than 90 days after the filing of an application for an order of approval under Subsection 77-23a-10(7) that is denied or the termination of the period of an order or extensions, the issuing or denying judge shall cause to be served on the persons named in the order or the application, and other parties to the intercepted communications as the judge determines in his discretion is in the interest of justice, an

6476 inventory, which shall include notice of:

6477 (i) the entry of the order or application;

6478 (ii) the date of the entry and the period of authorization, approved or disapproved  
6479 interception, or the denial of the application; and

6480 (iii) that during the period wire, electronic, or oral communications were or were not  
6481 intercepted.

6482 (e) The judge, upon filing of a motion, may in his discretion make available to the  
6483 person or his counsel for inspection the portions of the intercepted communications,  
6484 applications, and orders the judge determines to be in the interest of justice. On an ex parte  
6485 showing of good cause to a judge of competent jurisdiction the serving of the inventory  
6486 required by this Subsection (9)(e) may be postponed.

6487 (10) The contents of any intercepted wire, electronic, or oral communication, or  
6488 evidence derived from any of them, may not be received in evidence or otherwise disclosed in  
6489 any trial, hearing, or other proceeding in a federal or state court unless each party, not less than  
6490 10 days before the trial, hearing, or proceeding, has been furnished with a copy of the court  
6491 order, and accompanying application, under which the interception was authorized or  
6492 approved. This ten-day period may be waived by the judge if he finds that it was not possible  
6493 to furnish the party with the above information 10 days before the trial, hearing, or proceeding  
6494 and that the party will not be prejudiced by the delay in receiving the information.

6495 (11) (a) Any aggrieved person in any trial, hearing, or proceeding in or before any  
6496 court, department, officer, agency, regulatory body, or other authority of the United States, the  
6497 state, or a political subdivision may move to suppress the contents of any intercepted wire,  
6498 electronic, or oral communication, or evidence derived from any of them, on the grounds that:

6499 (i) the communication was unlawfully intercepted;

6500 (ii) the order of authorization or approval under which it was intercepted is insufficient  
6501 on its face; or

6502 (iii) the interception was not made in conformity with the order of authorization or  
6503 approval.

6504 (b) The motion shall be made before the trial, hearing, or proceeding unless there was  
6505 no opportunity to make the motion or the person was not aware of the grounds of the motion.

6506 If the motion is granted, the contents of the intercepted wire, electronic, or oral communication,

or evidence derived from any of them, shall be treated as having been obtained in violation of this chapter. The judge, upon the filing of the motion by the aggrieved person, may in his discretion make available to the aggrieved person or his counsel for inspection portions of the intercepted communication or evidence derived from them as the judge determines to be in the interests of justice.

(c) In addition to any other right to appeal, the state or its political subdivision may appeal from an order granting a motion to suppress made under Subsection (11)(a), or the denial of an application for an order of approval, if the attorney bringing the appeal certifies to the judge or other official granting the motion or denying the application that the appeal is not taken for the purposes of delay. The appeal shall be taken within 30 days after the date the order was entered and shall be diligently prosecuted.

(12) The requirements of Subsections (1)(b)(ii), ~~[and]~~ (2)(d), and (3)(b) ~~[of this section]~~ relating to the specification of the facilities from which, or the place where, the communication is to be intercepted do not apply if:

(a) in the case of an applicant regarding the interception of an oral communication[;]:

(i) the application is by a law enforcement officer and is approved by the state attorney general, a deputy attorney general, a county attorney or district attorney, or a deputy county attorney or deputy district attorney;

(ii) the application contains a full and complete statement of why the specification is not practical, and identifies the person committing the offense and whose communications are to be intercepted; or

(iii) the judge finds that the specification is not practical; and

(b) in the case of an application regarding wire or electronic communication:

(i) the application is by a law enforcement officer and is approved by the state attorney general, a deputy attorney general, a county attorney or district attorney, or a deputy county attorney or deputy district attorney;

(ii) the application identifies the person believed to be committing the offense and whose communications are to be intercepted, and the applicant makes a showing of a purpose, on the part of that person, to thwart interception by changing facilities; and

(iii) the judge finds that the purpose has been adequately shown.

(13) (a) An interception of a communication under an order regarding which the

requirements of Subsections (1)(b)(ii), (2)(d), and (3)(b) do not apply by reason of Subsection (12), does not begin until the facilities from which, or the place where, the communication is to be intercepted is ascertained by the person implementing the interception order.

(b) A provider of wire or electronic communications service that has received an order under Subsection (12)(b) may move the court to modify or quash the order on the ground that its assistance with respect to the interception cannot be performed in a timely or reasonable fashion. The court, upon notice to the government, shall decide the motion expeditiously.

Section 134. Section **78B-7-113** is amended to read:

**78B-7-113. Statewide domestic violence network -- Peace officers' duties --  
Prevention of abuse in absence of order -- Limitation of liability.**

(1) (a) Law enforcement units, the Department of Public Safety, and the Administrative Office of the Courts shall utilize statewide procedures to ensure that peace officers at the scene of an alleged violation of a protective order have immediate access to information necessary to verify the existence and terms of that order, and other orders of the court required to be made available on the network by the provisions of this chapter or Title 77, Chapter 36, Cohabitant Abuse Procedures Act. Those officers shall use every reasonable means to enforce the court's order, in accordance with the requirements and procedures of this chapter and Title 77, Chapter 36, Cohabitant Abuse Procedures Act.

(b) The Administrative Office of the Courts, in cooperation with the Department of Public Safety and the Criminal Investigations and Technical Services Division, established in Section 53-10-103, shall provide for a single, statewide network containing:

(i) all orders for protection issued by a court of this state; and  
(ii) all other court orders or reports of court action that are required to be available on the network under this chapter and Title 77, Chapter 36, Cohabitant Abuse Procedures Act.

(c) The entities described in Subsection (1)(b) may utilize the same mechanism as the statewide warrant system, described in Section 53-10-208.

(d) All orders and reports required to be available on the network shall be available within 24 hours after court action. If the court that issued the order is not part of the state court computer system, the orders and reports shall be available on the network within 72 hours.

(e) The information contained in the network shall be available to a court, law enforcement officer, or agency upon request.

6569           (2) When any peace officer has reason to believe a cohabitant or child of a cohabitant  
6570 is being abused, or that there is a substantial likelihood of immediate danger of abuse,  
6571 although no protective order has been issued, that officer shall use all reasonable means to  
6572 prevent the abuse, including:

6573           (a) remaining on the scene as long as it reasonably appears there would otherwise be  
6574 danger of abuse;

6575           (b) making arrangements for the victim to obtain emergency medical treatment;

6576           (c) making arrangements for the victim to obtain emergency housing or shelter care;

6577           (d) explaining to the victim his or her rights in these matters;

6578           (e) asking the victim to sign a written statement describing the incident of abuse; or

6579           (f) arresting and taking into physical custody the abuser in accordance with the  
6580 provisions of Title 77, Chapter 36, Cohabitant Abuse Procedures Act.

6581           (3) No person or institution may be held criminally or civilly liable for the performance  
6582 of, or failure to perform, any duty established by this chapter, so long as that person acted in  
6583 good faith and without malice.

---

---

**Legislative Review Note**

**as of 1-27-10 1:06 PM**

**Office of Legislative Research and General Counsel**

---

---

**H.B. 263 - Technical Cross Reference Revisions**

**Fiscal Note**

2010 General Session

State of Utah

---

---

**State Impact**

Enactment of this bill will not require additional appropriations.

---

**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

---